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THE
MARRIED WOMEN'S
PROPERTY ACTS

Third Edition

GRIFFITH

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VOLUME XXII, PART I, 1901 CONTENTS

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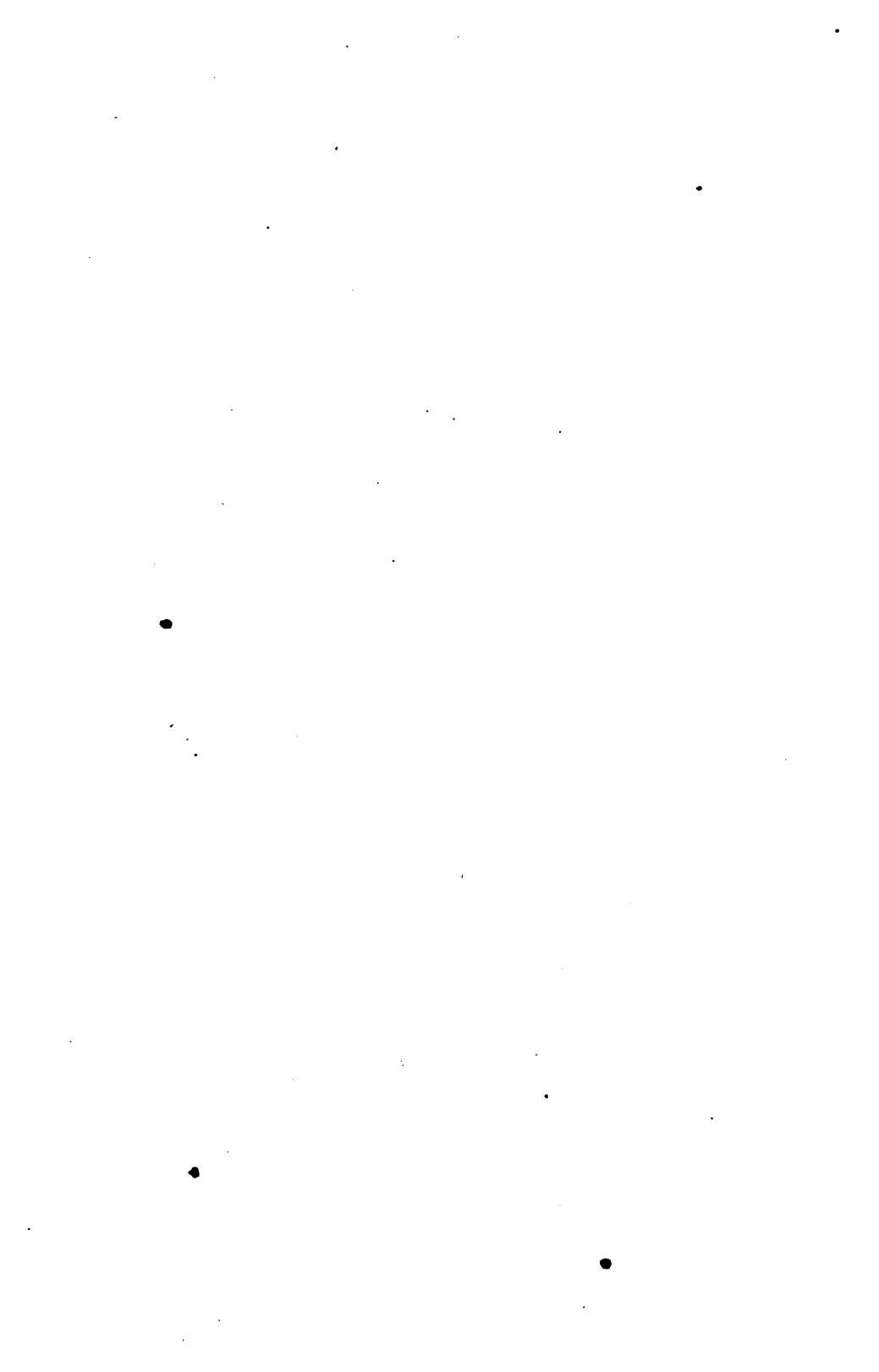
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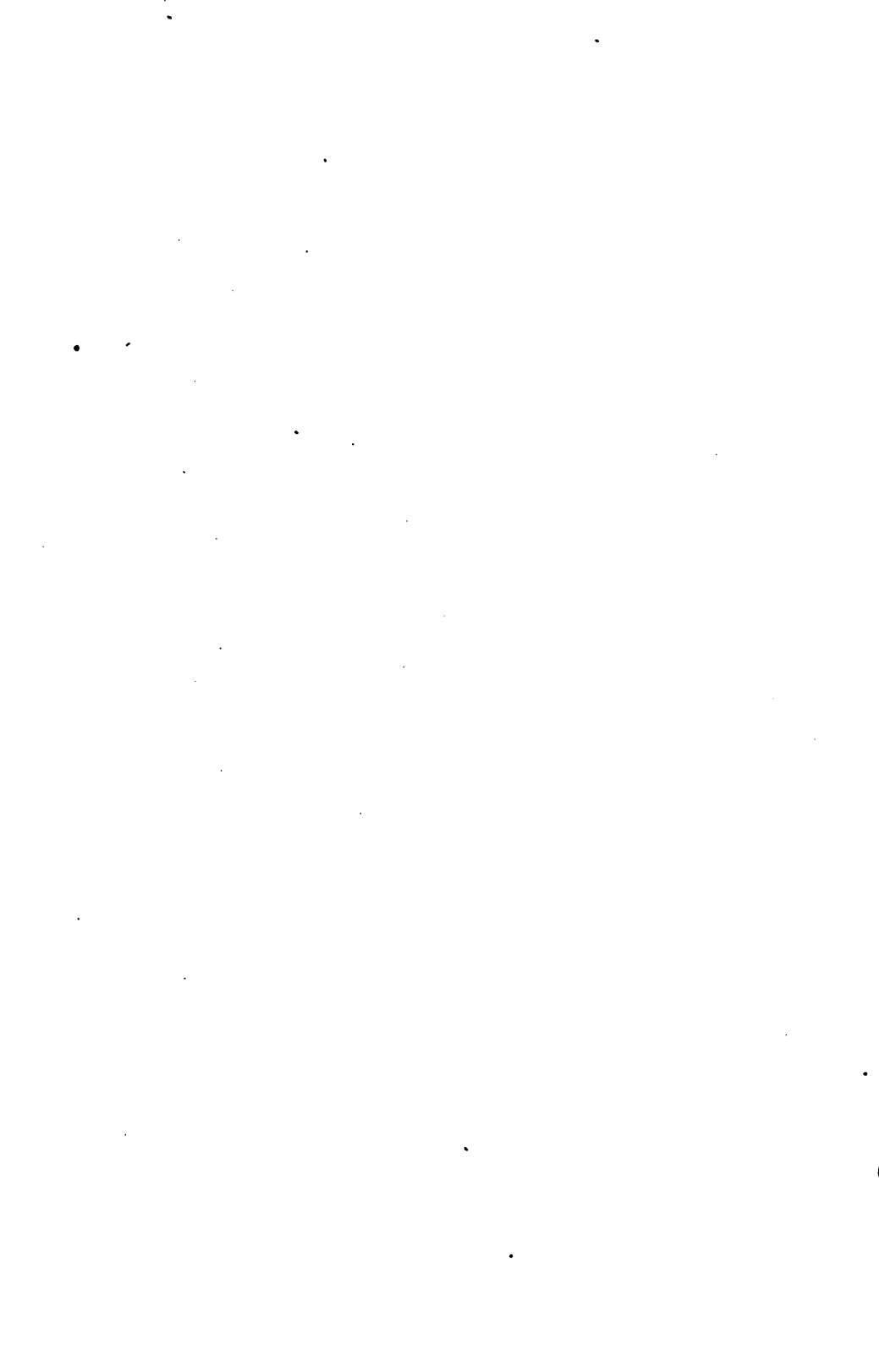
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THE MARRIED WOMEN'S PROPERTY ACT, 1870,

AND

**THE MARRIED WOMEN'S PROPERTY ACT, 1870,
AMENDMENT ACT, 1874.**



THE
MARRIED WOMEN'S PROPERTY ACT, 1870,

AND THE

*Married Women's Property Act, 1870,
Amendment Act, 1874.*

ITS RELATIONS TO THE

DOCTRINE OF SEPARATE USE.

With Appendix of Cases, Statutes and Forms.

BY

J. R. GRIFFITH, B.A., OXON,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

THIRD EDITION.



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PREFACE TO THE THIRD EDITION.

SINCE the appearance of the Second Edition, the defects of the 12th Section of the Act of 1870 have been remedied by an Amendment Act, passed in the last Session ; other and more extensive measures of reform having failed to obtain the sanction of the Legislature in the previous year.

The law of husband and wife cannot as yet be treated as in other than a state of transition. Well-recognized rules have, in deference to the needs of an altered state of society, been broken in upon or abolished ; but it is difficult to trace any comprehensive or intelligible principle in the reforms hitherto introduced.

It has been attempted, with the aid of the comparatively few decisions on the principal Act, to indicate the probable effect of the recent legislation. Some cases have been printed *in extenso* for convenience of reference, which, with the Forms, contained in the Appendix, may, it is hoped, be found useful as suggesting the practice under the Acts.

24, Old Square, Lincoln's Inn,
December 1874.

PREFACE TO THE FIRST EDITION.

THE object of the "Married Women's Property Act, 1870," as defined in the Preamble, is, "To Amend the Law of Property and Contract with respect to Married Women." Under the Act, the rights which women have hitherto enjoyed in Equity in respect of separate estate, are apparently recognised and adopted; while a most beneficial, if somewhat anomalous, position is given to them at Law. It has been attempted in the following Notes, to give a summary of the cases, decided in Courts of Equity, on the rights and liabilities of married women in relation to their separate estate; and to suggest some changes, which may probably arise in the practice of the Courts, from the new status given to them by the Act.

24, Old Square, Lincoln's Inn,
January 1871.

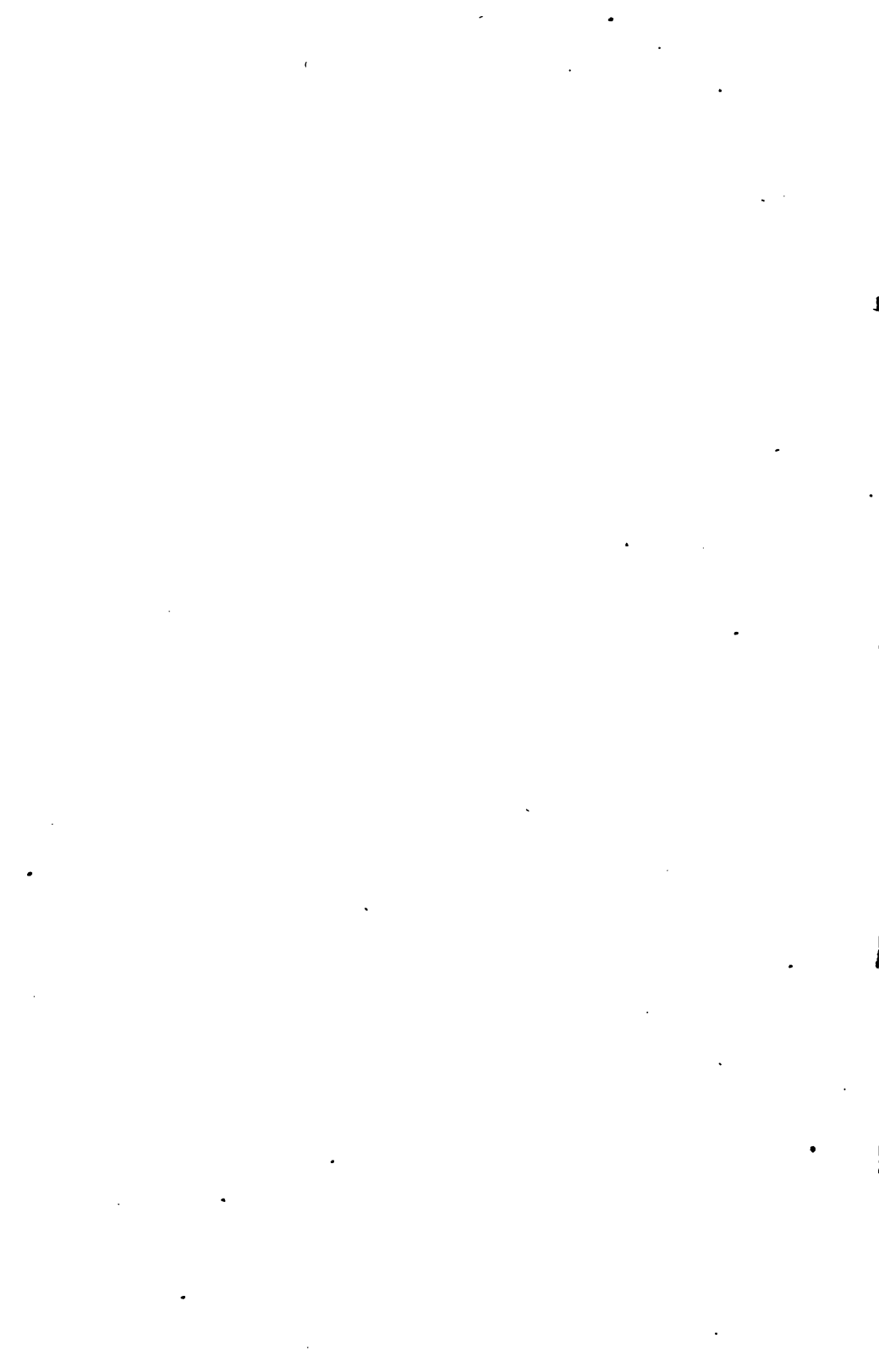


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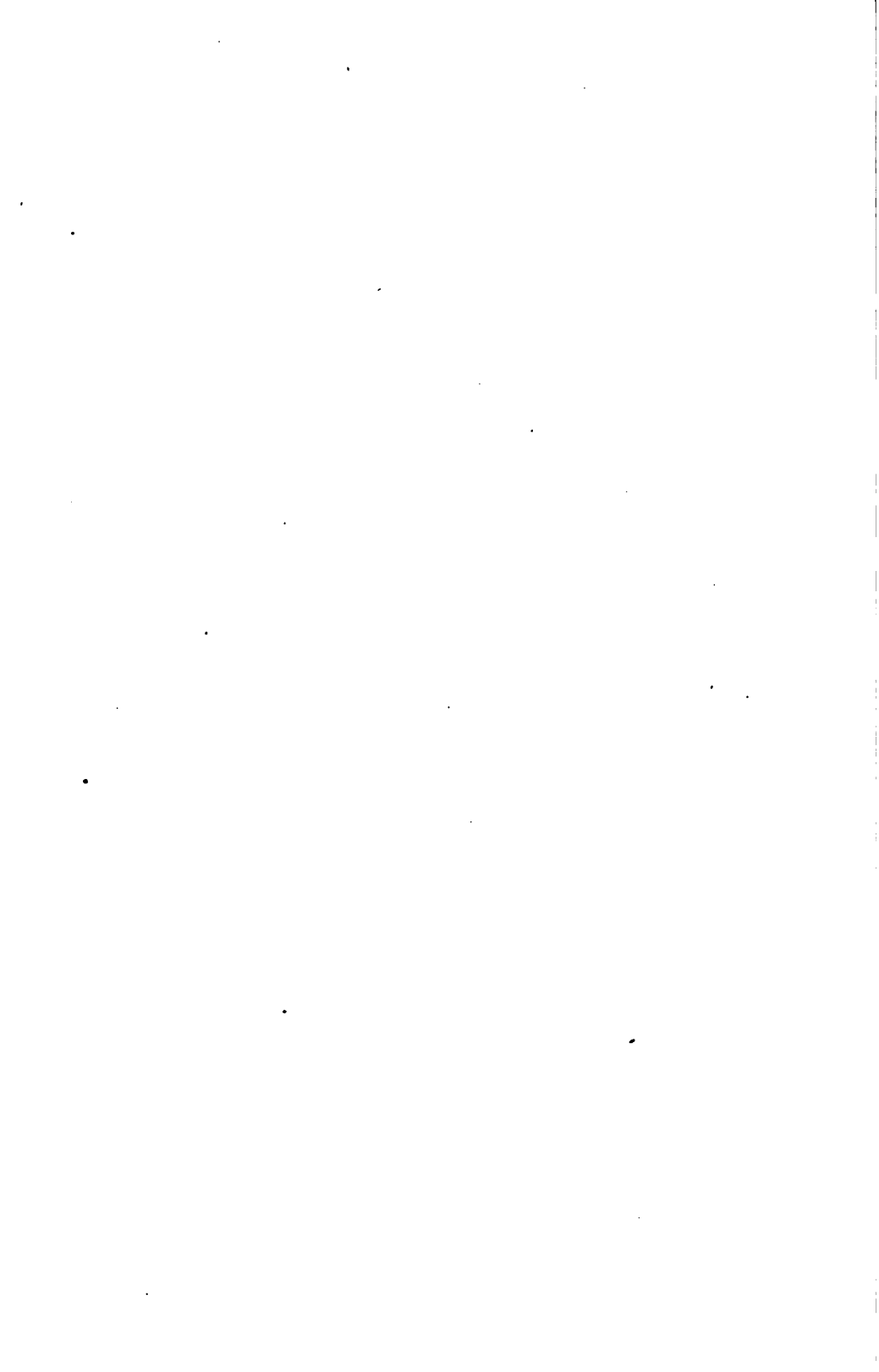
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MARRIED WOMEN'S PROPERTY.

The Doctrine of Separate Estate.

THE rule laid down by Lord *Hardwicke* in *Peacock v. Monk* (2 Ves. 190), and re-stated and adopted by Lord *Thurlow* in the leading case of *Hulme v. Tenant* (1 Bro. C. C. 15), "that a *feme covert*, acting with respect to her separate property, is competent to act in all respects as if she was a *feme sole*" (*ibid.* p. 19) is the basis upon which is founded the equitable doctrine of separate estate. In courts of Law a married woman, save in certain exceptional cases, as where the husband was an outlaw, had until the passing of the "Married Women's Property Act, 1870," no recognised status: her position was one of disability and immunity. In courts of Equity the case was different; she was indeed held incapable of binding herself personally, but her rights and liabilities in respect of her separate property were fully recognised. To quote again from the judgment of Lord *Thurlow* in

I. Separate estate in Equity.

Married woman's position in equity as a *feme sole* when possessed of separate property.

Hulme v. Tenant, "If a Court of Equity says a *feme covert* may have a separate estate, the Court will bind her to the whole extent, as to the making that estate liable to her own engagements, as for instance, for payment of debts" (*ibid.* p. 21).

Her status since
the Married
Women's Prop-
erty Act,
1870, and
Amendment
Act, 1874.

Since the passing of the "Married Women's Property Act, 1870," and the "Amendment Act, 1874," a great, if not a radical, change has been effected in the legal status of married women. They are now enabled to acquire, during the coverture, certain classes of property to their separate use, in respect of which they have an independent personal status in courts of Law; and are capable of taking such proceedings, in courts both of Law and Equity, as may be necessary for the protection and security of such property, freed from the disabilities which have hitherto attached to coverture. It appears, however, that, with certain exceptions to be hereafter noted (p. 15), the mode in which creditors of the separate estate may enforce their rights is not in any way varied, but that their remedy must be pursued as formerly in courts of Equity. It will be necessary therefore, before dealing with the provisions of the Acts, to consider briefly, what powers of disposition over their separate property have hitherto been enjoyed by married women, and what has been the extent and nature of their creditors' rights and remedies against such property.*

* See further, as to a married woman's rights and liabilities in respect of her separate property, Bright's Husband and Wife, and

A married woman's power of disposing of her separate estate by act "*inter vivos*," or by will, has been held to extend to her personal property, whether in possession (*Fettiplace v. Gorges*, 1 Ves. 45), or in reversion (*Sturgis v. Corp*, 13 Ves. 190), and to her life interest in the rents and profits of real estate (*Stead v. Nelson*, 2 Beav. 245). The partiality, however, with which the rights of the heir have ever been regarded at Common Law, caused courts of Equity in a long series of decisions to deny to married women the right to alienate the fee, though settled to their separate use, except by means of a fine or recovery, or since 1833 by deed duly acknowledged under the provisions of the Act (3 & 4 Will. 4, c. 74).

Power of disposition over separate personal estate.

Rents of real estate.

This anomaly has now, after some conflict of decisions, been removed; and since the case of *Taylor v. Meads* (34 L. J. (Ch.) 203; 13 W. R. 394), decided on appeal by *Westbury*, L.C., it may be considered as settled, that where lands are vested in trustees to the separate use of a married woman in fee, she has a complete power of alienating the equitable fee, by deed, though not acknowledged under the statute, or by will.

Power of alienating the equitable fee by deed or will, where legal estate in trustees.

Accordingly in the recent case of *Pride v. Bubb* (L. R. 7 Ch. 64), where real estate was vested in trustees for the separate use of a married woman, under the provisions of a deed of separation duly executed by her husband and herself, it was decided by *Hatherley*, L.C., that she had

notes to *Hulme v. Tenant*, 1 White and Tudor's Leading Cases in Equity, 481 *et seq.* 4th Edition.

a good power of disposition by will or deed unacknowledged. "It cannot," said his Lordship, "be now disputed that when a woman is the owner of real estate to her separate use, she is to all intents and purposes in the position of a *feme sole*, so as to be able to dispose of that estate by will or deed. The object of this deed is clearly to place this lady, with reference to all her real property whatsoever and wheresoever acquired, in exactly the same position as if she had no husband at all. If that had been so limited by a deed made anterior to her marriage, nobody disputes that the case would come precisely within the doctrine laid down by Lord *Westbury* (*vide Taylor v. Meads*), that she would hold as a *feme sole* and be able to make a will, the husband being placed out of the way."

So too where
no trustees are
interposed.

In *Hall v. Waterhouse* (13 W. R. 633; 11 Jur. (N.S.) 361) it was decided that the right of alienating the equitable fee attaches, where lands are vested in a married woman to her separate use without the intervention of trustees. In the latter class of cases, however, if it is desired to secure the protection of the legal estate, as for instance in a mortgage, the deed must still be acknowledged under the Act.

Alienation by
contract.

Though the cases above referred to extend only to the power of disposition by deed or will, it appears that the principle extends to instruments of a less formal nature. It is clear that, subject to the requirements of the Statute of Frauds being complied with, a married woman may bind her separate real estate by contract, and that specific

performance will be enforced by decree against her separate property (*Gaston v. Frankum*, 2 De G. & Sm. 561; *Picard v. Hine*, L. R. 5 Ch. 274).

The history of the separate estate shows a gradual extension of the rights of creditors against such estate, where not protected by the restriction against anticipation. It was at first held that express charges alone would affect a married woman's separate property. After a time the rights of creditors claiming under a certain class of securities, such as bonds, bills of exchange, or promissory notes, were admitted against the separate estate, though not expressly referring thereto; and finally it has been decided that a married woman's general engagements, though not expressed in writing, will, with certain exceptions, bind her separate estate.

Rights of creditors against the separate estate.

The judgment of *Turner*, L.J., in *Johnson v. Gallagher* (30 L. J. (Ch.) 298; 9 W. R. 506), where the cases are fully considered, and the principles regulating the rights of creditors are laid down with a fulness and precision which has since made it a leading case on the liability of married women in respect of their separate estate, will best illustrate the growth of the doctrine and the existing state of the law upon this point.

Johnson v. Gallagher.

In that case the bill was filed by the assignees in bankruptcy of a trade creditor of Mrs. *Gallagher*, to charge her separate estate, she having carried on a separate business apart from, and with the consent of, her husband. On the whole case his Lordship dismissed the bill, on the ground that an assignment by Mrs. Gallagher

On bill by general creditor to charge the separate estate.
Held, that a specific charge had priority.

to secure the debt of another creditor, though it comprised all her property, and was made after the filing of the bill, was upon the evidence good as against general creditors, who had no specific charge.

Circumstances under which separate estate is bound.

Lord Justice Turner, in his judgment, drew the following distinctions, which are worthy of attentive study, as the principles there laid down will apparently govern cases as to contracts made with, and credit given to, a *feme covert* under the "Married Women's Property Act, 1870."

Express charges bind the separate estate.

—"It has not, so far as I am aware, ever been disputed that married women may encumber their separate estates by mortgage or charge. When any question has arisen on such securities the question has been, not on the right to create the security, but upon the circumstances under which it has been created. . . .

So also bonds, bills, and notes.

"Again, there are very many cases which have established that the bonds, bills of exchange, and promissory notes of married women are payable out of their separate estates. . . .

And general engagements.

"It has been a more disputed, and is a more doubtful question, whether the separate estates of married women are liable for their general engagements, such as tradesmen's bills and claims of that description. Looking at this question without reference to authorities, it is difficult to see upon what ground debts of this class can be distinguished from debts of the class to which I have last referred; what distinction there can for this purpose be between debts by specialty and debts by simple contract, and, still more, what distinction there can be

between simple contract debts of different descriptions; and if no sound distinction can be drawn between the different classes of debts, the authorities which apply to the one class must, as it should seem, govern the other. . . . The weight of authority seems to me to be in favour of the liability; and I think, too, that the principle on which all the cases proceed, that a married woman in respect of her separate estate, is to be considered as a *feme sole*, is also in favour of it; and upon the whole, therefore, I have come to the conclusion that not only bonds, bills, and promissory notes of married women, but also their general engagements may affect their separate estates, except as the Statute of Frauds may interfere where the separate estate is real property. I am not prepared, however, to go the length of saying that the separate estate will in all cases be affected by a mere general engagement. . . . What might affect the separate estate in the case of a married woman living separate from her husband, might not, as I apprehend, affect it in the case of a married woman living with her husband. What might bind the separate estate, if the credit be given to the married woman, would not, as I conceive, bind it if the credit be not so given. . . . According to the best opinion which I can form on a question of so much difficulty, I think that, in order to bind the separate estate by a general engagement, it should appear that *the engagement was made with reference to and upon the faith or credit of that estate, and that whether it was so made or not is a ques-*

Exceptions:—
(1.) Under Statute of Frauds.

(2.) Where upon the evidence it does not appear that the engage-

ment was entered into with reference to the separate estate.

tion to be judged of by this Court upon all the circumstances of the case."

His Lordship, after reviewing the authorities on the question whether there had been any contract binding the separate estate, proceeded as follows:—"The defendant, *Jane Gallagher*, at the time when the goods for which the plaintiffs claim to be paid were ordered and furnished, was living separate from her husband, and the evidence, I think, shows that the tradesmen who supplied the goods supposed and believed that she had separate estate, and dealt with her upon that assumption. So far, therefore, as they were concerned, they dealt on the footing of separate estate. How was it, then, on the part of the defendant, *Jane Gallagher*? She was, as I have said, living separate from her husband, and had separate estate, and I think that, *where under such circumstances a married woman contracts debts, the Court is bound to impute to her the intention to deal with her separate estate, unless the contrary is clearly proved.* The Court cannot impute to her the dishonesty of not intending to pay for the goods which she purchased."

The fact that husband and wife are living apart, strong evidence that separate property is bound.

Secus, where husband and wife are living together, *onus* on creditor to show that separate estate is bound.

Intention to charge separate estate must be clear, and trans-

The fact that husband and wife were living together at the time when the debt was incurred, is strong evidence to show that the obligation is not such as to bind the wife's separate estate; and apparently throws on the creditor the *onus* of proving that the separate estate was intended to be bound. And though a debt, originally that of the husband, may be adopted by the wife, and where there is a sufficient consideration will then bind

her separate property, yet the intention to charge that property must be clear, and the transaction must be free from objection on the ground of imposition, duress, or fraud.

action free
from imposi-
tion, duress,
or fraud.

These principles are illustrated by the case of *Bromley v. Norton* (21 W. R. 155). There a claim was made, in a suit for the administration of the estate of Mrs. Bromley, by the landlord of the Hôtel d'Angleterre, at Baden-Baden, in respect of the balance of his account, of which he had been unable to obtain payment from Mr. Bromley. The hotel bills had been made out during a stay of three months in the name of Mr. Bromley and family. In October, 1865, Mr. Bromley left the hotel suddenly, owing bills to the amount of 400*l*. Mrs. Bromley, with her children, remained in the hotel, and was detained by the hotel keeper and, under his orders, prevented by the police from leaving the hotel. A further debt was, in the meantime, incurred. Ultimately Mrs. Bromley's father, hearing what had happened, sent his secretary, who, with Mrs. Bromley, signed a document in French, which, as translated, was as follows:—"The debt of Monsieur S., Hôtel d'Angleterre, against Madame Bromley, is fl.5,305.51. On account of the above sum I pay through Messrs. Muller and Co., by order of M. (the father), 100*l*. sterling, and another 100*l*. will be paid in June 1866. Monsieur declares, through me, that he thinks and hopes that the remainder of the above debt will be paid." Upon payment of 100*l*. Mrs. Bromley was released, and it was argued that this release was a sufficient consideration for

Bromley v.
Norton.

the memorandum, as a charge upon her separate property. Malins, V.C., in deciding against the claim, said, "that in order to bind a separate estate by a general engagement, the credit must be given upon reliance on the separate estate. When a married woman is separate from her husband, the Court would consider that she was contracting upon the strength of her separate estate. *But there is no case where, when husband and wife are living together, it presumes that there is an intention to resort to the separate estate.* Monsieur S.'s only right, therefore, was through the memorandum, but in looking at the memorandum the Court must look at the surrounding circumstances. . . . The landlord *was bound to know* that it was not her debt, and that she only said it was her debt in order to escape *from duress*." As to the circumstances under which the separate estate has been held to be bound, see *Mrs. Matthewman's Case*, L. R. 3 Eq. 781; 36 L. J. (Ch.) 90; 15 W. R. 146; *Picard v. Hine*, L. R. 5 Ch. 274; 18 W. R. 178; *McHenry v. Davies*, L. R. 10 Eq. 88; 18 W. R. 855; App. p. 61. *The London Chartered Bank of Australia v. Lemprière*, L. R. 4 P. C. 572; 21 W. R. 513.

A married woman may bind her separate estate by the acts and representations of her agent.

A married woman may also bind her separate estate by the acts and representations of her agent. *Gaston v. Frankum*, 2 De G. & Sm. 561; *McHenry v. Davies* (App. p. 61). In the latter case the defendant, a married woman, had drawn a cheque in favour of T., in order to enable him to raise money. Lord Romilly in his judgment said, "that if a *feme covert* employs a person in the

situation of T. to act as her agent and amanuensis, and afterwards gives documents to the same person, with her name on them, for the express purpose of enabling him to raise money on the credit of her name, she is liable to make good out of her separate estate, to the person advancing money on the faith of her name, the amount he has so advanced."

In administering the estate of a married woman after her decease, her separate property is treated as equitable assets, and is distributed among her creditors *pari passu* (*Owens v. Dickenson*, Cr. & Ph. 48; *Gregory v. Lockyer*, 6 Madd. 90; *vide contra Shattock v. Shattock*, L. R. 2 Eq. 182). Certain *dicta* of *Romilly*, M.R., in *Shattock v. Shattock* (*ubi supra*) leave it doubtful how far general engagements, not expressly charging the separate estate, constitute debts proveable against that estate after death. The tendency of recent decisions, however, appears to be in favour of making the liability of the separate estate, in respect of a married woman's debts and engagements, coextensive with her power of disposition over her separate property, and of sweeping away distinctions based on the form in which the obligation was contracted, wherever an intention is expressed, or may be implied, to deal with that property. (*Picard v. Hine*, L. R. 5 Ch. 274; *McHenry v. Davies*, L. R. 10 Eq. 88; 18 W. R. 855; App. p. 61.)

The question has often been raised, whether property, over which a married woman has a general power of appointment, is liable to the payment of her debts. That such is the case, where a man has actually exercised such

Rights of creditors in administration of separate estate.

Property over which a married woman has a general power of appointment.

a power, is well established (*Jenney v. Andrews*, 6 Madd. 264 ; 1 White and Tudor's Leading Cases, p. 495).

*The London
Chartered
Bank of
Australia v.
Lemprière.*

The recent case of *The London Chartered Bank of Australia v. Lemprière* (L. R. 4 P. C. 572 ; 21 W. R. 513) establishes, that a similar doctrine is applicable in the case of married women, and overrules various earlier decisions to the contrary. There, Mrs. Aitkin was entitled to large personal estate to her separate use for life, with remainder as she should by deed or will appoint, with remainder in default of appointment to her executors and administrators. There was no restraint against anticipation. At the request of her bankers she gave them a letter, signed by herself and her husband, charging certain funds comprised in the settlement, as security for her overdrafts. On her death, after exercising by will her power of appointment, a large sum was due on her overdrawn account, which the bankers sought to charge on the settled property. The Courts of Victoria decided that there was no charge ; but on appeal to the Privy Council their decision was reversed. Lord Justice James, after stating the limitations of the settlement, there said, that "their Lordships were satisfied that, on the weight of authority and on principle, they ought to treat this, as what it was in common sense, and to common apprehension, it would be, *an absolute gift to the sole and separate use* of the lady. That the words were an expansion and expression of what would be implied in the words sole and separate use ; and they conceived themselves at liberty to hold that such a form of gift to a married woman, without any restriction against

A limitation to A. for life, for her separate use with remainder as A. shall by deed or will appoint with remainder, in default of appointment, to A.'s executors and administrators, is an absolute gift to the sole and separate use.

anticipation, vested in equity the entire *corpus* in her, *for all purposes, as fully as a similar gift to a man would vest it in him.*" This case therefore decides that property so limited is in fact separate estate, and liable as such; even, it would appear, though there has been no execution of the power. In the case of *Heatly v. Thomas* (15 Ves. 596), cited with approval in the judgment of Lord Justice James, where the power was exercisable by will only, a married woman's bond was held to bind the corpus of the appointed fund.

Before the Act of 1870 separate property might have been created in various ways. Thus, as is laid down by Lord Langdale in *Tullett v. Armstrong* (1 Beav. 21), it may be acquired "either by contract with the husband before the marriage, or by gift from him or from any stranger wholly independent of such contract." It may also be created by special agreement between husband and wife after marriage (*Haddon v. Fladgate*, 1 Sw. & Tr. 48; *Pride v. Bubb*, L. R. 7 Ch. 64). If a wife is deserted by her husband, she is apparently entitled, apart from the provisions of 20 & 21 Vict. c. 85, s. 21, to hold property, acquired by her after desertion, to her separate use (*Cecil v. Juxon*, 1 Atk. 278; *Re Pope's Trusts*, 21 W. R. 646). Where, also, after being judicially separated, the wife returns to cohabitation, under 20 & 21 Vict. c. 85, s. 25, she holds the property to her separate use.

Under the "Married Women's Property Act, 1870," a new class, which for the sake of distinction may be called statutory separate property, is created. A distinction

Separate property, how created.

II. Separate estate at Law. The Married Women's Property Act, 1870.

must therefore now be taken between statutory separate property, to which alone, as it appears, the extended rights conferred on married women by that Act are intended to apply, and those interests which are still recognised as separate property in Courts of Equity alone.

Statutory.

Under the first class will come all earnings acquired after the passing of the Act (August 9, 1870), in any trade or occupation which a married woman shall carry on separately from her husband, and all investments of such earnings (sect. 1); deposits or investments to a married woman's separate use under sects. 2, 3, 4, and 5; personal property without restriction as to nature or value devolving "*ab intestato*" on a woman married after the passing of the Act, as well as sums of money not exceeding 200*l.* to which she may become entitled under any deed or will (sect. 7); the rents and profits of real estate descending to her (sect. 8); and policies of insurance effected to a married woman's separate use (sect. 10). Property belonging to a woman before marriage, which her husband has by writing under his hand reserved to her separate use, will also apparently be statutory separate property, for the purposes of sect. 11.

Equitable.

Separate property arising in any other mode, not falling under the Act, will constitute the second class. It will be observed that an express trust for separate use will still be necessary as before the Act, in the case of real and personal property, other than sums of money not exceeding 200*l.*, left by deed or will. Property so limited to the separate use, unless it be property be-

longing to the wife "before marriage, and which her husband shall by writing under his hand have agreed with her shall belong to her after marriage as her separate property" within the meaning of sect. 11, will not carry with it the legal rights conferred by the Act, though it will apparently be subject to the liabilities imposed upon married women by sects. 13 and 14 of the principal Act, and sect. 12 as amended by the Act of 1874.

Married women are now enabled to invest their separate property in savings banks and government annuities (sect. 2), in the public funds (sect. 3), in shares and debentures, to which no liability is attached, in any incorporated or joint-stock company (sect. 4), and in similar shares in friendly and benefit societies duly registered (sect. 5), so as to obtain a good legal title thereto, as statutory separate property. As between husband and wife it appears that these clauses cannot be intended to give more than a *prima facie* title, unless the investment is made with his consent, and that all equities are left untouched.

Investment
clauses.

The rights of creditors of the husband are reserved by sect. 6, where property has been fraudulently settled by him on his wife; and the creditors are enabled to follow such property, as if the Act had not passed.

Husband's
creditors.

It does not appear that any remedy at Law is given to the wife's creditors against her separate property, except in the cases falling within sects. 13 and 14 of the principal Act, and sect. 12, amended by 37 & 38 Vict. c. 50. In other cases, the creditor's remedy will probably

Wife's
creditors.

be by bill in Chancery or equitable plaint in the County Court, to charge her separate estate. See *Johnson v. Gallagher* (*ubi supra*), and compare and distinguish the language of 20 & 21 Vict. c. 85, ss. 21, 26 (App. pp. 73, 74).

Questions
between hus-
band and wife.

Questions between husband and wife, in relation to separate estate made such by the Act, may, under sect. 9, be decided on summons or motion in a summary way in the existing Courts of equitable jurisdiction, without any limit as to the value of the property involved. It appears probable that the ordinary jurisdiction of Courts of Equity will be held to extend to statutory separate property, and that it will be in the discretion of the parties to choose their remedy under this section, or according to the ordinary practice, as the nature and complexity of the circumstances may require.

Wife's action
at law.

The power which married women possess, under sect. 11, of maintaining an action at law is confined to the cases arising on statutory separate property; but, subject to that qualification, the right extends to all women, whether married before or after the 9th of August, 1870. The right of action attaches to property belonging to the wife *before* marriage, and which the husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property. This provision will apply to settlements to which the husband is a party, as well apparently as other less formal instruments; but where, as is usually the case, the property is vested in trustees for the wife, it is apprehended that the action must still be brought in the name of the trustees.

The husband is (in cases not falling within the Amendment Act), by sect. 12, released from liability at law to be sued for his wife's debts contracted before marriage. Creditors have now, in respect of such debts, a legal remedy against the wife, who is liable to the extent of her separate property. The section does not appear to provide for the case where property of the wife has, either innocently or by collusion, been permitted to vest in the husband on marriage, so as to defeat the rights of her creditors. It appears probable, however, that equity, by analogy to the cases of fraudulent settlements, will, on proof of the intention to defraud, give a remedy to the creditors against such property of the wife as has vested in the husband in his marital right.

Wife responsible at law for debts contracted before marriage.

The section is express in restricting the creditor's rights against the wife to debts, and does not, it is conceived, give them a right of action in respect of her torts or breaches of contract committed before marriage, for which the husband is still alone liable. This omission is supplied in the Amendment Act, as regards women married after the 30th of July, 1874.

The husband responsible for his wife's torts or breaches of contract.

By sect. 13, the wife, if possessed of separate property, is made liable to maintain her pauper husband; and by sect. 14, her children, when the father has ceased to maintain them, yet so as not to affect his primary liability. In both of these cases the usual legal remedies to procure payment are made applicable to married women.

Wife responsible at law for maintenance of husband and children.

The Act, which came into operation on the 9th of August, 1870, does not apply to Scotland. (Sects. 15 and 16.)

The "Married Women's Property Act (1870) Amendment Act, 1874."

The defects of the 12th section of the "Married Women's Property Act, 1870," have been remedied by an Amendment Act (37 & 38 Vict. c. 50), which came into operation on the 30th of July, 1874, and repeals, as regards marriages solemnised after that date (sect. 1), the 12th section of the principal Act, so far as it enacts that the husband shall not be liable for his wife's debts contracted before marriage.

The husband's liability for his wife's debts, torts, and breaches of contract, limited to the extent of his assets.

The husband and wife may be sued jointly for any such debt (sect. 1), and also for damages for any tort or breach of contract committed or made by the wife before marriage; and judgment may be recovered against the husband and wife jointly to the extent of any assets, for which the husband is liable, and as to the residue, if any, of such debt or damages separately against the wife (sects. 2, 4).

What are assets.

Assets, in respect of which the husband is liable, comprise the value of such chattels real and personal as vest in him in right of his wife; the choses in action of the wife, and the rents and profits of her real estate, which the husband has, or with reasonable diligence might have, reduced into possession and received; any estate or interest settled by the wife on the husband, or on any other person, in contemplation of her marriage; and any property which the wife, in contemplation of her marriage with him, shall have transferred to any other person in fraud of her existing creditors.

The husband exonerated to the extent of any debts paid by, or judg-

The husband may (sect. 5) give evidence, showing that he has paid debts of his wife, or had judgment recovered against him in any such action as is mentioned in the Act,

and will be exonerated from liability to the extent of any such payment or judgment. If it is not found that the husband is liable in respect of any such assets, as are mentioned in the Act, he is entitled to his costs of judgment, whatever may be the result of the action as against the wife (sect. 3).

ment recovered
against him, on
behalf of his
wife.

Husband's
costs.

The Amendment Act does not extend to Scotland (sect. 6).

MARRIED WOMEN'S PROPERTY ACT, 1870.

(33 & 34 VICT. CAP. 93.)

*An Act to amend the Law relating to the Property of
Married Women.* [9th August, 1870.]

WHEREAS it is desirable to amend the law of property and contract with respect to married women :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade (*a*) in which she is engaged or which she carries on separately from her husband (*b*), and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments (*c*) of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use (*d*), independent of any husband to whom she may be married,

Earnings of married women to be deemed their own property.

and her receipts alone shall be a good discharge for such wages, earnings, money, and property.

Lawful occupations protected.

(a) The protection afforded by the Act, in accordance with the general policy of the law, extends only to lawful occupations and trades. See *Mason v. Mitchell* (3 H. & C. 528; 34 L. J. (Ex.) 68) decided under 20 & 21 Vict. c. 85, s. 21, where property of the wife, acquired by keeping a disorderly house, was held not to be entitled to protection against the husband claiming in his marital right.

Agreement between husband and wife as to separate business.

(b) Under the old law, an agreement between husband and wife, that she should carry on a separate business, if made before marriage, was binding both on the husband and his creditors—if after marriage, on the husband alone (2 'Bright's Husband and Wife,' 293). This distinction, which was based on the wife's inability to contract during coverture will, it is submitted, now cease; and in either case the wife having under the Act a right, independently of contract with her husband, to trade separately, will be equally protected against claims made by her husband or his creditors under the powers given her by sects. 9 and 11. The question whether the business is carried on by her separately is one of evidence, to be determined on the circumstances of the case (*Smallpiece v. Dawes*, 7 C. & P. 40). It is desirable that the husband should give his written consent to the carrying on of separate business by the wife, since such consent, in the absence of fraud or collusion, will be binding both on the husband and his creditors.

Onus of proof.

Married women being now capable of holding separate property at law, the onus of proof will lie upon those who claim adversely to them. And see note (g) to sect. 2.

What investments are within the Act.

(c) It does not appear that a married woman's power of investing her earnings under this section is to be restricted to those classes of investments for which special facilities are given by sects. 2, 3, 4, and 5; but that, on the contrary, all investments of such earnings, being "property by this Act declared to be her separate property," will carry with them the various legal rights and incidents conferred by the Act. Thus furniture, stock in trade, or plant purchased out of wages or earnings, will be as much separate property as the wages

Furniture, stock in trade.

or earnings themselves; and this view of the construction to be put upon the section is confirmed by the language of sect. 11, which extends the civil and criminal remedies thereby given to any "chattels or other property purchased or obtained" by means of any "wages, earnings, money, and property," declared by the Act to be separate property.

Where investments are made in real estate, the equitable fee may be disposed of by the wife, without the forms prescribed by the Act for the Abolition of Fines and Recoveries, by act *inter vivos* or by will (*Taylor v. Meads*, 34 L. J. (Ch.) 203; 13 W. R. 394; *Hall v. Waterhouse*, 13 W. R. 683; 11 Jur. (N.S.) 361; *Pride v. Bubb*, L. R. 7 Ch. 64). Real estate.

Where lands were purchased in part out of proceeds of the wife's separate estate, and conveyed to her husband in fee, the wife was held entitled to a charge thereon, for the amount so advanced by her with interest, from the date of her husband's death (*Scales v. Baker*, 28 Beav. 91; *cf. Darkin v. Darkin*, 17 Beav. 578). Purchased in part out of separate estate.

Where no disposition has been made by the wife of her real estate so purchased it will descend on her death to her heir, subject to the payment of her debts. It appears to be doubtful whether the husband can claim his estate by curtesy in his wife's separate estate of inheritance. In *Moore v. Webster* (L. R. 3 Eq. 267) the decision was against the husband's right; while the contrary conclusion was arrived at in the later case of *Appleton v. Rowley* (L. R. 8 Eq. 139). Subject to debts.

Curtsey—
query.

Where the separate use extends to the *life estate only*, and does not extend to the remainder in fee, there appears to be no doubt on the authorities as to the husband's right by curtesy. See cases cited in note (z), sect. 8.

To avoid difficulties in dealing with the legal estate, the conveyance, in cases where land is acquired under this section, should be taken to such uses as the wife shall appoint, and in default of appointment to her separate use in fee. Form of conveyance.

(d) The effect of the Act is to place women, whether married before or after the passing of the Act (August 9th, 1870), in the position of *femes sole* in respect of the beneficial enjoyment of property acquired after the Act by their industry or skill. As regards this class of property, and all other separate property made Rights and liabilities under the Act in respect of separate estate.

- such by the Act, they have now a personal legal status, with power to enter into contracts, give receipts, and pursue their remedies, civil and criminal, in relation to such separate property in their own name, free from the incapacities hitherto consequent on coverture; while at the same time they apparently retain, with the exceptions falling within sects. 12 (as amended by 37 & 38 Vict. c. 50), 13, and 14, the personal immunity from adverse legal proceedings which they have hitherto enjoyed. They may deal with such separate property during their lifetime, or dispose of it by will on their death, free from the control of their husbands. Questions arising during the coverture between husband and wife, with regard to separate property made such by the Act, may under sect. 9 be settled in a summary way by summons or motion in the Court of Chancery or County Court, without restriction as to the amount of the property in question.
- Contract.**
- Will.**
- Probate limited to statutory separate estate.** Where a woman had been deserted by her husband in 1866, and subsequently acquired property by her own industry, which she purposed to dispose of by will, probate was limited to her earnings since the passing of the Act. *In the goods of Pepper*, 31 L. T. (N.S.) 272. But see *Cecil v. Juxon*, 1 Atk. 278; *Re Pope's Trusts*, 21 W. R. 646 (*supra*, p. 13), which do not appear to have been cited.
- The husband's rights in his deceased wife's separate estate.** Subject to any disposition, which the wife may make in her lifetime by act *inter vivos*, or by will, the husband's rights after her death will re-attach unaffected by the Act. As against him the "intermittent fetter," as it has been called, of the separate use, which exists only as an incident of coverture, will then drop off, and he will be remitted to his legal rights. Therefore on the death of the wife intestate, the husband will succeed to her real estate as tenant by the curtesy, where such right exists,—see note (c) *supra* and note (z) to sect. 8; and to her personal estate if in action, as her administrator (*Proudley v. Fielder*, 2 My. & K. 57), if in possession, in his marital right (*Molony v. Kennedy*, 10 Sim. 254), subject to the payment of her debts.
- Creditor's rights by bill in equity.** The separate property of a married woman will be liable during her lifetime in Courts of Equity to satisfy the demands of creditors, whose debts are either expressly or by implication charged thereon (*Johnson v. Gallagher*, 30 L. J. (Ch.) 298; 9 W. R. 506; and cases cited, pp. 5-10, *supra*), and after her death her creditors may file a bill for the administration of her estate, which is treated as equitable

Annuities in-
alienable ex-
cept on bank-
ruptcy.

If it should be held that married women are not within the scope of the Bankruptcy Laws, it seems that government annuities held by them are, under 16 & 17 Vict. c. 45, s. 25, absolutely inalienable, and cannot be made available for payment of their debts during coverture. But see note (f) sect. 11.

As to a married woman's rights and liabilities in respect of her separate property see note (d) sect. 1.

Fraud on mari-
tal rights.

(f) Property belonging to a woman before marriage cannot be validly appropriated to her separate use, except with the consent of her intended husband. Any such disposition without his consent will be held in equity a fraud on his marital rights. See note (i), sect. 3.

Onus of proof.

(g) Formerly, as separate property was not recognised at law, the onus was thrown upon the married woman of proving her title to such property. Now, in all cases of statutory separate property, the wife having at law a good *primâ facie* title, it will lie upon those who claim adversely to her to prove that property *alleged to be her separate property* within the meaning of the Act, is not in fact her separate property. As to the onus of proof see observations of Wood, V.C., in *Barrack v. McCulloch* (3 K. & J. 119, 120), and see note (f), sect. 11.

Husband's
equities re-
served under
proviso.

(h) By this proviso the rights of the husband are reserved, where moneys, either his own or coming to him in right of his wife, have been invested by her without his consent to her separate use. Subject to any right of set-off claimed by the wife, the husband is enabled under the 9th section to recover such moneys in a summary way. Sects. 3, 4, and 5 contain similar provisions. As to what personal property of the wife still vests in the husband in his marital right see note (x), sect. 7. As to the rights of creditors of the husband, where he has transferred property of his own to his wife's separate use, see note (v), sect. 6.

As to a married
woman's pro-
perty in the
funds.

III. Any married woman, or any woman about to be married (i), may apply to the Governor and Company of the Bank of England, or to the Governor and Company of the Bank of Ireland, by a form to be provided by the

governor of each of the said banks and company for that purpose, that any sum forming part of the public stocks and funds (*k*), and not being less than twenty pounds, to which the woman so applying is entitled, or which she is about to acquire, may be transferred to or made to stand in the books of the governor and company to whom such application is made in the name or intended name of the woman as a married woman entitled to her separate use, and on such sum being entered in the books of the said governor and company accordingly the same shall be deemed (*l*) to be the separate property of such woman, and shall be transferred and the dividends paid as if she were an unmarried woman; provided that if any such investment in the funds is made by a married woman by means of moneys of her husband without his consent (*m*), the Court may, upon an application under section nine of this Act, order such investment and the dividends thereof, or any part thereof, to be transferred and paid to the husband.

(*i*) The effect of this section is, to enable women during coverture to hold sums of stock of 20*l.* and upwards to their separate use without the intervention of trustees. As to their rights and liabilities in respect of such stock, see note (*d*), sect. 1. The section applies equally to women married before and after the 9th of August, 1870. An unmarried woman can avail herself of its powers only in contemplation of marriage, wherefore any transfer of stock to her separate use cannot be safely made without the concurrence of her intended husband. Unless made with his consent, expressed or implied, a transfer under this section would be voidable by him. Transfer of stock.
as a settlement in fraud of his marital rights.* (See *Countess of* When void against the husband.

* The forms of application furnished by the Bank of England under

Strathmore v. Bowes, 1 Ves. Jun. 22, and notes thereto, 1 Wh. and Tu. L. C. 406, *et seq.* 4th Ed.)

Fraud on
marital rights.

It has been held to be immaterial that the husband before marriage was ignorant of the existence of the property (*Goddard v. Snow*, 1 Russ. 485). Actual fraud or deception practised on the husband need not be proved; suppression of the fact of the settlement will be constructive fraud (*St. George v. Wake*, 1 My. & K. 610; *Downes v. Jennings*, 32 Beav. 290). If, however, the husband becomes aware before marriage of the reservation of separate property by the wife, his subsequent marriage will be held an implied consent to such disposition of her property, and a waiver of his right to set it aside (*St. George v. Wake*, 1 My. & K. 622; *Ashton v. M'Dougall*, 5 Beav. 56).

Transfer of
fund in Court
with consent of
the husband.

Where a married woman was entitled for life to the income of a sum of consols, the Court, under this section, *with the consent of the husband* and the reversioner, ordered a transfer into her name as a married woman entitled to her separate use (*In re Bartholomew's Estate*, W. N. 1870, 234; 19 W. R. 95; *Frank v. Mackay*, Ir. R. 8 Eq. 93). But where the woman was a ward of Court, the fund was ordered to be settled on her (*In re Butlin's Trusts*, W. N. 1870, 251; 23 L. T. (N.S.) 523; 19 W. R. 241).

Not where
woman a ward
of Court.

Public stocks
and funds.

(*k*) As to what is meant by "public stocks and funds," see Davidson's 'Precedents and Forms in Conveyancing,' vol. iii. p. 547, note (*h*), 2nd Ed. By the Metropolitan Board of Works (Loans) Act, 1871 (34 & 35 Vict. c. 47, s. 14), this section is, as regards the Governor and Company of the Bank of England, extended and made applicable to Metropolitan Consolidated Stock.

Metropolitan
Consolidated
Stock.

(*l*) See note (*g*), sect. 2.

(*m*) See note (*h*), sect. 2.

As to a mar-
ried woman's
property in a
joint-stock
company.

IV. Any married woman, or any woman about to be married (*n*), may apply in writing to the directors or

this section provide for the concurrence of the husband or intended husband in such application. It is understood that the Bank will not refuse to register, though the consent of the husband has not been obtained.

managers of any incorporated or joint-stock company that any fully paid-up shares, or any debenture or debenture stock, or any stock of such company, to the holding of which no liability is attached, and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty (o) of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed (p) to be the separate property of such woman, and shall be transferred and the dividends and profits paid as if she were an unmarried woman; provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent (q), the Court may, upon an application under section nine of this Act, order such investment and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband.

(n) As to fraud on marital rights, in the registration of shares under this section, see note (i) to sect. 3.

Fraud on marital rights.

(o) A married woman, or a woman about to be married, may now claim as of right to be the registered legal owner of stock and shares to which she is entitled, and to which no liability attaches, in any incorporated or joint-stock company, as her separate property. The section is imperative, and on an application under the section the company must investigate the title to the shares, and, unless they can show a flaw in the title, may be compelled by *mandamus* to register (*Reg. v. Carnatic Railway Company*, L. R. 8 Q. B. 299; 21 W. R. 621; 28 L. T. 413). As to her rights and liabilities in respect of such property see note (d), sect. 1. It is to be observed that the present

Married woman a shareholder at law.

The section imperative.

section does not in terms provide for the compulsory registration of shares which a married woman *intends to acquire* to her separate use. Compare and distinguish in this respect the previous section. But, it is conceived, that a contract for the purchase of shares, conferring an equitable title, would be sufficient, since the section presupposes the want of a legal title in the applicant, which it is the object of the section to supply. And see the Judicature Act, 1873 (36 & 37 Vict. c. 66), s. 25, § 6.

In equity.

Even before the passing of the Act, there was nothing in the nature of a joint-stock company which, apart from special prohibitory clauses, prevented a married woman, possessed of separate estate, from contracting in equity to take, and from holding in her own name, stock or shares of any description as her separate property (*Mrs. Matthewman's Case*, L. R. 3 Eq. 781; 36 L. J. (Ch.) 90; 15 W. R. 146; *Butler v. Cumpston*, L. R. 7 Eq. 16; 38 L. J. (Ch.) 35; 17 W. R. 24). Equity will therefore protect property of this nature, even where the legal title cannot be obtained under the present section. If such property represent investments of earnings under sect. 1, it will apparently possess the additional incidents of statutory separate estate. See note (b) to sect. 9, and (f), sect. 11. A married woman may be made a contributory in respect of her separate estate (*Mrs. Matthewman's Case*, *supra*).

Married woman
a contributory.

(p) See note (g) to sect. 2.

(g) See note (h) to sect. 2.

As to a married
woman's pro-
perty in a
society.

V. Any married woman, or any woman about to be married (r), may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit-building society, or loan society, duly registered, certified, or enrolled under the Acts relating to such societies respectively, that any share, benefit, debenture, right, or claim whatsoever in, to, or upon the funds of such society, to the holding of which share, benefit, or debenture no liability is attached, and to which the woman so applying is

entitled, may be entered in the books of the society in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty (s) of such committee or trustees to cause the same to be so entered, and thereupon such share, benefit, debenture, right, or claim shall be deemed (t) to be the separate property of such woman, and shall be transferable and payable with all dividends and profits thereon as if she were an unmarried woman; provided that if any such share, benefit, debenture, right, or claim has been obtained by a married woman by means of moneys of her husband, without his consent (u), the Court may, upon an application under section nine of this Act, order the same and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband.

(r) As to fraud on marital rights, see note (i), sect. 8.

Fraud on marital rights.

(s) The section is imperative, and renders it compulsory on societies to register, *Reg. v. Carnatic Railway Company*, note (o), sect. 4. The application of this section is restricted to the case of shares, benefits, and debentures, to which a woman, married or about to marry, is entitled (see note (o), sect. 4), and to which no liability is attached. The ordinary shares in such societies, which involve periodic payments, will therefore not come within its scope. It will, however, probably afford to married women an accessible mode of investment for small sums, now that it has been decided that a rule authorizing societies, constituted under 6 & 7 Will. 4, c. 32, to borrow within reasonable limits is not illegal under the statute (*Laing v. Reed*, L. R. 5 Ch. 4; 18 W. R. 76; 39 L. J. (Ch.) 1). As to the incidents of such shares and debentures, when entered as separate property under the Act, see note (d) to sect. 1.

What shares, benefits, and debentures are within the section.

It is to be observed, that shares in freehold land societies are not within the section. The cases show, that societies having for their

Freehold land societies.

object the acquisition of land, cannot be legally constituted under any of the building or benefit-societies' Acts. See *Grimes v. Harrison*, 26 Beav. 435; *Hughes v. Layton*, 10 Jur. (N.S.) Q. B. 513, s. c. *sub. nom. Hughes v. D'Eyncourt*, 12 W. R. 408.

Title in equity
to shares not
within the
section.

As regards shares and interests, which whether as involving future liabilities, or for other reasons, do not come within the section, it is submitted that the principle of *Mrs. Matthewman's Case* (L. R. 3 Eq. 781; 36 L. J. (Ch.) 90; 15 W. R. 146) must be held to apply, and that married women possessed of separate estate may contract to take such shares and interests, and may acquire a good equitable title thereto, as their separate property. And see note (o), sect. 4.

(t) See note (g) to sect. 2.

(u) See note (h) to sect. 2.

Deposit of
moneys in
fraud of credi-
tors invalid.

VI. Nothing hereinbefore contained in reference to moneys deposited in or annuities granted by savings banks, or moneys invested in the funds, or in shares, or stock of any company, shall, as against creditors of the husband, give validity to any deposit or investment of moneys of the husband made in fraud of such creditors (v), and any moneys so deposited or invested, may be followed as if this Act had not passed.

Creditors of
the husband
may follow
fraudulent
investments.

(v) The powers given to married women by the preceding sections of holding separate property free from the rights and control of their husbands, will afford to dishonest debtors facilities for making fraudulent investments in their wives' names. The present section reserves the rights of creditors against property so invested and settled, and enables them to follow it as if this Act had not passed. In such cases the transfer, though fraudulent against creditors, will be binding on the husband. See *Groves v. Groves*, 3 Yo. & Jer. 163.

Under what
circumstances.

The rights of creditors will, however, it is conceived, by analogy to the law of fraudulent settlements, vary according to circum-

stances. Thus, if a settlement has been made on the wife, in contemplation of marriage, or for other valuable consideration, the onus is on the creditors to prove actual intention to defraud. (*Holmes v. Penney*, 3 K. & Jo. 90.) The consideration of marriage will not prevail, if part of a scheme to defraud creditors (*Colombine v. Penhall*, 1 Sm. & Giff. 228; *Bulmer v. Hunter*, L. R. 8 Eq. 46; 38 L. J. (Ch.) 543). If, on the other hand, the settlement is voluntary, it is sufficient to prove constructive fraud, which will be presumed from a variety of circumstances. Thus, where a settlor, solvent at the date of the settlement, was thereby left without funds sufficient immediately to pay his debts, and subsequently it proved that a creditor was in fact hindered and delayed in recovering his debt, the settlement was set aside as fraudulent and void (*Freeman v. Pope*, L. R. 5 Ch. 538). And a subsequent creditor, who can prove the existence of a debt incurred prior to the settlement, may procure the settlement to be set aside, and rank as a creditor against the settled property (*ibid.*). And see *Jenkyn v. Vaughan*, 3 Drew, 419. And as to fraudulent settlements, see notes to *Twyne's Case*, 1 Sm. L. C. 10 *et seq.*, 6th Ed., and notes to *Ellison v. Ellison*, 1 Wh. & Tu. L. C. 245 *et seq.*, 4th Ed.

Settlement for value void where actual fraud.

Voluntary, where constructive fraud.

As to onus of proof, see note (g), sect. 2.

VII. Where any woman married after the passing of this Act shall during her marriage become entitled (*w*) to any personal property as next of kin or one of the next of kin of an intestate, or to any sum of money (*x*) not exceeding two hundred pounds under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge for the same (*y*).

Personal property not exceeding £200 coming to a married woman to be her own.

(*w*) The benefit of this section is restricted to women married after the passing of the Act, who have not by settlement contracted themselves out of its provisions. It differs in its language from

Section does not apply to women married before the Act.

the following section, the application of which is not in terms limited to interests accruing to the wife *during coverture*. See note (z), sect. 8. The wording of the section suggests a doubt whether sums of money under 200*l.* which may have vested subject to a contingency or in remainder under any deed or will prior to marriage, but fall into possession during the coverture, are within the Act. It appears, however, that "entitled" must be construed as "entitled in possession" (*Lane v. Oakes*, 22 W. R. 709; 30 L. T. 726), where a reversionary interest in a fund, to which a woman became entitled prior to, but which fell into possession after, marriage was held to be within the Act. In that case, the fund having been paid out of Court on the joint petition of the husband and wife, to the husband in right of his wife, was held to have lost its character of separate estate, and to have been validly attached by a creditor of the husband. Compare *Johnson v. Lauder* (L. R. 7 Eq. 228; 17 W. R. 272), decided on the 25th section of the Divorce Act.

"Entitled" means "entitled in possession."

A fund within the section, if paid to the husband with the consent of the wife, ceases to be separate estate.

Share under Statutes of Distribution is separate property.

Secus. Personality coming under deed or will, unless sum of money under 200*l.*

Limitation to separate use still necessary, in case of leaseholds, stocks, and shares.

(x) The marginal note to this section is inaccurate. The character of separate estate is now impressed upon all personality, without restriction as to its nature or value, to which a woman becomes entitled during coverture as next of kin or one of the next of kin of an intestate. Where, however, personal property is acquired by deed or will, sums of money not exceeding 200*l.* will alone come within the section. It appears, however, by analogy to the cases decided on covenants to settle after-acquired property, that where more than one legacy or a legacy and share of residue, severally within, but in the aggregate exceeding, the amount of 200*l.*, are bequeathed by the same will, that the benefit of the section may be claimed in respect of each several amount (*Re Middleton's Will*, 16 W. R. 1107); and as to interests accruing under deeds, see *Bower v. Smith*, L. R. 11 Eq. 279. As to what is held to pass under a gift of "money," see *Lowe v. Thomas*, 5 De G. M. & G. 315, and 1 Jarm. on Wills, 730, note (k), 3rd Ed.

With the above exception, an express limitation to separate use will still be necessary, where it is intended to secure personal property by deed or will to married women, as the section does not affect personality acquired before marriage, or leaseholds, stock, shares, &c., coming to women by deed or will after marriage. Such personality, in default of the limitation to separate use, will still

vest in the husband in his marital right, and the wife will be left to claim her equity to a settlement as before the Act. It does not appear that paraphernalia, or gifts of jewellery or trinkets made to the wife, are within the section. The latter class of property, however, is usually held separate property in equity. (*Graham v. Londonderry*, 3 Atk. 394.) As to trust estates, see note (a), sect. 8.

Gifts of jewellery.

Unless the property be reduced into possession by the wife, the quality of separate estate ceases at her death, and the husband as her administrator becomes entitled thereto, subject to the payment of her debts. She may, however, dispose of outstanding or reversionary separate property during her lifetime or by will (*Sturgis v. Corp*, 13 Ves. 190; *Lechmere v. Brotheridge*, 32 Beav. 353, 369; 11 W. R. 814).

Husband's rights in deceased wife's personalty.

(y) Payment of a fund in Court may, it is conceived, within the limits of this section, now be made to a married woman on her sole receipt, without any other inquiry than as to the existence of a settlement: the saving in favour of the trusts of any settlement affecting the fund will keep alive the restriction against anticipation, which has been held to be destroyed in the case of a woman who had obtained a protection order under 20 & 21 Vict. c. 85, s. 21, by which Act the power of giving receipts is left unqualified and absolute (*Cooke v. Fuller*, 26 Beav. 99).

Payment out of Court to married woman.

Restriction on anticipation.

VIII. Where any freehold, copyhold, or customaryhold property shall descend upon any woman married after the passing of this Act as heiress or co-heiress of an intestate (z), the rents and profits (a) of such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipts alone shall be a good discharge for the same.

Freehold property coming to a married woman, to be her own.

(z) The marginal note to this section is again misleading. The section does not extend to lands acquired by conveyance, devise or

Section confined to lands descended.

otherwise than by descent; the limitation for separate use is therefore necessary in all cases, as before the Act. Its application is not in terms restricted to lands descended during the coverture.

Rents and profits to separate use for life.

A woman, married after the passing of the Act, will be entitled to the rents and profits of real estate, to which she may become entitled as heiress or co-heiress of an intestate, to her separate use for life, subject to the trusts of any settlement affecting the same, and will have the same proprietary rights over such separate estate as a *feme sole*. The Act does not, however, affect her rights over the

Power to dispose of the fee by deed acknowledged.

fee, but leaves her as before, unable to deal with it, except under the provisions of the Act for the Abolition of Fines and Recoveries (*Lechmere v. Brotheridge*, 32 Beav. 353; 11 W. R. 814). On the other hand, since the character of separate estate ceases on her death, the reversion in fee will not be subject to her debts. For the same reason she cannot dispose of it by will, nor will her husband's title as tenant by the curtesy be excluded. Subject therefore to the tenancy by the curtesy, where existent, the fee will descend to her heir (*Morgan v. Morgan*, 5 Mad. 408; *Follet v. Tyrer*, 14 Sim. 125).

Tenancy by the curtesy.

Arrears of rent.

Arrears of rent will, on the death of the wife without disposing thereof during her lifetime or by will, form part of her separate personal estate, and be subject, as such in the hands of her administrator, to the payment of her debts (*Pearle v. Greenbank*, 3 Atk. 718).

Trust estates.

(a) The terms of this section, no less than the general scope and object of the Act, appear to indicate that it is designed to protect beneficial interests alone of married women from marital control; and that it is not intended to apply to estates and interests vested in them in a fiduciary capacity. It is conceived, therefore, that a married woman, acting as trustee or executrix, is still subject to the same incapacities as heretofore. Compare and distinguish the language of 20 & 21 Vict. c. 85, s. 31, amended by 21 & 22 Vict. c. 108, s. 7,* which expressly provides for the case of trust estates. And see the observations of Wood, V.C., in *Batke v. Bank of England*, 4 K. & J. 564.

* See Appendix, p. 75.

IX. In any question between husband and wife as to property declared by this Act to be the separate property of the wife (b), either party may apply by summons or motion in a summary way either to the Court of Chancery in England or Ireland, according as such property is in England or Ireland, or in England (irrespective of the value of the property) † the Judge of the County Court of the district in which either party resides, and thereupon the Judge may make such order, direct such inquiry, and award such costs as he shall think fit; provided that any order made by such Judge shall be subject to appeal in the same manner as the order of the same Judge made in a pending suit or on an equitable plaint would have been, and the Judge may, if either party so require, hear the application in his private room.

How questions as to ownership of property to be settled.

† [Sic]

(b) Questions arising between husband and wife in relation to separate property may now be decided in a summary way under this section. A distinction must, however, as it appears, be drawn between "property declared by this Act to be the separate property of the wife" and those classes of separate property which, not coming within the scope of the Act, will still be recognised as such in Courts of Equity alone. Property settled by the husband or third parties on the wife to her separate use in the ordinary way will apparently fall under the latter head, and see note (x) to sect. 7. With regard to the former class of statutory separate property, proceedings may now be taken by either husband or wife, in a summary way by summons or motion without bill filed, in the Court of Chancery or in the County Courts, irrespective of the value of the property involved.

Section does not extend to equitable separate property.

Under its protective jurisdiction the Court of Chancery will restrain a husband by injunction from interfering with his wife's separate business, and, under special circumstances, from entering

Injunction against husband's interference in separate business.

her house. (*Green v. Green*, 5 Hare, 400 n.; *post*, p. 64; *Wood v. Wood*, 19 W. R. 1049.)

Fraud on husband.

As to questions in relation to property appropriated or settled to the wife's separate use under the Act, in fraud of her husband's marital rights, see note (i), sect. 3. And where, after marriage, moneys of the husband have been similarly appropriated without his consent, such moneys and all investments thereof will remain in equity his property (*Barrack v. M'Culloch*, 3 K. & J. 114). The savings of the wife, from an allowance made to her by her husband for household purposes, cannot without his consent be invested to her separate use; unless she be living separate from him (*Brooke v. Brooke*, 25 Beav. 342). And see note (h), sect. 2. As to the onus of proof in such cases see note (g), sect. 2; and under the old law, *Grant v. Grant*, 13 W. R. 1057.

Savings from allowance.

Relief in cases of fraud or duress.

Where, on the other hand, separate property of the wife has come into the possession of the husband, the wife being in relation to such separate property in the position of a *feme sole*, will be bound by her dealings relating thereto (*Pawlet v. Delaval*, 2 Ves. 663); and will obtain relief only on proof of fraud, duress, or the like on the part of the husband (*Ibid.*; *Essex v. Atkins*, 14 Ves. 542). But the course of dealing must be distinctly proved, and the intention of the wife to make over her property to her husband be clear, as the Court will not raise a presumption against her (*Rich. v. Cockell*, 9 Ves. 369). On the other hand, there must be corroborative evidence to establish a gift from husband to wife (*Grant v. Grant*, 13 W. R. 1057).

Evidence of gift.

Acquiescence.

Tacit acquiescence, however, in the receipt of income of separate estate by the husband will disentitle the wife to an account against him (*Caton v. Rideout*, 1 Mac. & G. 599; *Payne v. Little*, 26 Beav. 1); *secus* where the wife has not consented (*Parker v. Brooke*, 9 Ves. 583) or where the husband has received the income to her use (*Darkin v. Darkin*, 17 Beav. 578). And the wife may sue her husband in equity, or prove against his estate after his death, for sums advanced to him by way of loan (*Woodward v. Woodward*, 3 De G. J. & S. 672; 11 W. R. 1007).

Loan to husband.

Married woman may effect policy of insurance.

X. A married woman may effect a policy of insurance upon her own life or the life of her husband for her

separate use (c), and the same and all benefit thereof, if expressed on the face of it to be so effected, shall enure accordingly, and the contract in such policy shall be as valid as if made with an unmarried woman.

A policy of insurance effected by any married man on his own life (d), and expressed upon the face of it to be for the benefit of his wife or of his wife and children (e), or any of them, shall enure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate. When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by the Court of Chancery in England or in Ireland, according as the policy of insurance was effected in England or in Ireland, or in England by the Judge of the County Court of the district, or in Ireland by the Chairman of the Civil Bill Court of the division of the county in which the insurance office is situated, and the receipt of such trustee shall be a good discharge to the office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid.

As to insurance of a husband for benefit of his wife.

(c) Insurances by married women, if not altogether unknown, have hitherto been rarely effected, owing to the incapacity of the wife to contract, except as the agent of her husband, and subject to

Insurances by wife.

Premiums paid out of moneys of husband. his right to adopt her contracts for his own advantage. A married woman will now be able to insure her own or her husband's life, and thereby to secure a fund to her separate use, which she may dispose of by will or otherwise at her sole discretion. Where premiums have been paid out of moneys of the husband without his consent, he will probably be held to have a lien in equity on the policy moneys to the extent of such premiums. See *Norris v. Caledonian Insurance Company*, L. R. 8 Eq. 127. On the death of the wife, without having made any disposition of the fund insured, the husband, as her administrator, will become entitled thereto, subject to the payment of her debts. As to the insurable interest of the wife in her husband's life, see *Reed v. Royal Exchange Assurance Company*, Peake's Add. Ca. 70.

Settlement on wife by means of policy to separate use. (d) By means of a policy effected under this section, a married man is enabled indefeasibly to settle a fund on his wife or children payable at his death, subject to the deduction of a sum equivalent to such premiums, if any, as shall be proved to have been paid by him in fraud of his creditors; and reverting to him on the failure of the objects for which the policy purports to have been effected. A policy expressed to be for the benefit of children will be absolutely inalienable, so long as there are infant children, or the possibility of issue, of the marriage. As to fraud on creditors see note (v) to sect. 6.

On children. (e) Under the County Courts Equitable Jurisdiction Act, 1865 (28 & 29 Vict. c. 99, s. 1), the County Courts have jurisdiction in all proceedings relating to the maintenance or advancement of infants, in which the property of the infant shall not exceed in amount or value 500*l*.

County Court jurisdiction over infants. XI. A married woman may maintain an action in her own name (f) for the recovery of any wages, earnings, money, and property by this Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property, and she shall

Married women may maintain an action.

have in her own name the same remedies, both civil and criminal, against all persons whomsoever for the protection and security of such wages, earnings, money, and property, and of any chattels or other property purchased or obtained by means thereof for her own use, as if such wages, earnings, money, chattels, and property belonged to her as an unmarried woman (g); and in any indictment or other proceeding it shall be sufficient to allege such wages, earnings, money, chattels, and property to be her property.

(f) This section effects an important change in the status of married women. Before the Act a *feme covert*, save in certain exceptional cases, as where the husband was a convict or an outlaw, was not recognised as having any personal existence at law apart from her husband; and in equity only if, and so far as, she was possessed of separate property; a qualification which it lay upon her to establish, before she could obtain a hearing. See *Barrack v. M'Culloch*, 3 K. & J. 119, 120. Now the onus is shifted, and an allegation by the wife, that the property is her separate property, is sufficient both at law and in equity to give the Courts jurisdiction, and to make a *prima facie* case. Personal status of married woman at law.

Further, where a married woman claims to be possessed of separate property made such by the Act, see note (b) to sect. 9, or of property which belonged to her *before marriage*, which her husband by writing under his hand (such writing apparently to be given before marriage) has agreed shall belong to her *after marriage* as her separate property, she has an independent personal status, so far as is necessary for the beneficial enjoyment and protection of such property; and may pursue all remedies civil and criminal in relation thereto in her own name without necessarily bringing her husband before the Court. Not only does the section give a right of action in cases directly involving the recovery or protection of separate property, but it has been decided that it extends to cases of breach of contract in relation to a separate business. Onus of proof.
Civil and criminal remedies for recovery or protection of separate property.
Breach of contract.

Summers v. The City Bank.

A married woman, carrying on a separate business, may sue her bankers for a breach of contract.

In the recent case of *Summers v. The City Bank*, 31 L. T. (N.S.) 268, a married woman, carrying on business as a sole trader, and having, as such, a banking account, sued her bankers for breach of contract, and it was held that the action lay. The facts of the case, which was heard on demurrer, sufficiently appear from the judgment of Coleridge, C.J., which was as follows:—"The question raised in this case is, whether a married woman can, under the words of the 11th section, maintain an action against her bankers for breach of contract. The declaration against the defendants contains three counts: first for not presenting for payment a bill of exchange deposited with them for that purpose; secondly, for not giving notice to the plaintiff of the dishonour of a bill of exchange deposited with them for that purpose; and, thirdly, for dishonouring a cheque drawn by the plaintiff upon the defendants, the defendants having at the time funds of the plaintiff to meet it. The defendants pleaded that the plaintiff was a married woman. The plaintiff replied that the cause of action arose exclusively from earnings, money, chattels and 'property within the meaning of the 'Married Women's Property Act, 1870,' and that the plaintiffs knew, when they accepted her banking account, that she was a married woman, carrying on business separately from her husband. To this replication the defendants demurred. We are of opinion that the replication is good. The words of the section are very wide, and provide for two states of things. By the first part of the section, the married woman may 'maintain an action' for the recovery of wages, earnings, &c., and by the second portion of the section she is to have 'the same remedies, both civil and criminal, against all persons whomsoever, for the protection and security of such wages, earnings, &c., as if such wages, earnings, &c., belonged to her as an unmarried woman.' The question is perhaps not precisely the same on all the three counts. But, to take the third count first, it is plain that this section of the Act will become almost useless, if a married woman, otherwise within its provisions, cannot maintain an action against her bankers for dishonouring her cheque.

"It does not necessarily follow, because a married woman may sue her bankers for dishonouring her cheque, that the general propo-

sition is true without qualification, that she can maintain an action for damages for breach of contract.

"The relation of banker and customer is a peculiar one. It is that of debtor and creditor with a custom superadded (*Foley v. Hill*, 2 H. L. Ca. 28), and it seems perfectly clear that, as far as the count for dishonouring the cheque is concerned, the plaintiff is seeking a remedy for the protection of her earnings, within the meaning of the 11th section. The first and second counts undoubtedly raise a somewhat broader question, as they are founded upon a contract of agency. But we think that the words of the 11th section are sufficient to cover this state of circumstances also. To hold otherwise would be in effect to say, that a married woman could not safely have any of her earnings paid to her by bills of exchange, for that she has no protection against the negligence of the banker to whom she entrusts them.

"Our decision in favour of the plaintiff under these circumstances must not be taken to affirm, nor will it affirm, the general proposition that under this Act, and without reference to particular circumstances, a married woman can contract." It is conceived Rule. that the principle to be deduced from this decision is, that when a contract is entered into by a married woman, personally or by her agent, within the legitimate scope of the separate business, or necessary and proper, according to the exigencies of every-day life, for the protection and security of her separate property, she is enabled to enforce such contracts, and has her remedy for the breach of them under this section.

It is presumed that in all cases within the section the wife may now sue in equity without a next friend. It may, however, be a question whether the defendant will not then be entitled to apply for security for costs (*Picard v. Hine*, L. R. 5 Ch. 275). For the same reason, in like cases, it appears that a bill by the wife will not be open to demurrer for lack of parties where the husband is not before the Court; yet circumstances may render it necessary or expedient that he should as heretofore be made a defendant. Next friend. Whether husband a party.

By the 15th Rule, scheduled to the Judicature Act, 1873 (36 & 37 Vict. c. 66), married women and infants may respectively sue as plaintiffs by their next friends, in the manner practised in the Court of Chancery before the passing of this Act, and infants may in like Parties under Judicature Act, 1873.

manner defend any action by their guardians appointed for that purpose. Married women may also, *by the leave of the Court or a Judge*, sue or defend without their husbands and without a next friend, on giving such security (if any) for costs as the Court or a Judge may require.

Married woman
a defendant.

It will be observed that though a married woman is entitled to maintain an action, there is nothing apparently in the Act, with the exception of the cases provided for by sects. 12, 13, and 14, to alter the existing practice, where she is made a defendant.*

Plea of cover-
ture.

Thus in *Hutton v. Marriott* (15 Solicitor's Journal 289), decided by Mr. McTaggart, late Judge of the Northampton County Court, where the plaintiff sued a married woman carrying on a separate business and living at a distance from her husband, for salary and wrongful dismissal, a plea of coverture was held good. See also *McGovern v. Hinkey*, App. p. 69.

Injunction
against a *feme*
covert.
Refused in
Warne v.
Routledge.

The cases leave it doubtful, whether an injunction will be granted against a married woman, on the ground of her inability to bind herself *personally* by contract. In *Warne v. Routledge* (22 W. R. 750; 43 L. J. (Ch.) 604), the present Master of the Rolls declined to grant an injunction against an authoress to restrain the publication of a second edition of a book, the copyright of which she claimed as her separate property, on the ground of her incapacity to bind herself by contract. On the other hand, in the case of *Swanborough v. Henderson* (App. p. 67), *Hall*, V.C., granted an injunction with costs, against an actress who, contrary to the terms of her contract with the plaintiff, had engaged to play at a rival theatre. Both cases were argued, and treated by the Court as falling under the 1st section of the "Married Women's Property Act, 1870." See also *Hope v. Carnegie* (L. R. 7 Eq. 254), where, on motion to commit the wife for breach of an injunction, which had been granted against husband and wife, it was said by *Stuart*, V.C., that "wherever the separate property of the wife is concerned, or the separate acts of the wife are disowned by the husband, this Court has never wanted the means of enforcing against the wife, as easily as against the husband, its orders and decrees" (p. 261).

Granted in
Swanborough v.
Henderson.

* Distinguish 20 & 21 Vict. c. 85, ss. 21, 26, App. pp. 73, 74.

The effect of a *contract* in respect of separate estate, within the principle of *Johnson v. Gallagher* (*supra*, p. 5), being to charge the property, though not to give a personal right of action against the married woman, the appropriate remedy in such a case, subject to the statutory limitation as to value, is apparently by plaint under the equitable jurisdiction of the County Court (38 & 39 Vict. c. 99), s. 1; and see *Clayton v. Renton*, L. R. 4 Eq. 158, where it was held, that that section extended to constructive trusts.

Equitable remedy in County Court in case of contract.

In former editions an opinion was expressed that married women, if possessed of separate property, would now be liable to be made bankrupts, since they are recognised at law as competent to contract, and may sue and be sued in certain cases, apart from their husbands. The point has recently arisen in *Re Heneage* (L. R. 9 Ch. 307; 22 W. R. 425; 43 L. J. (Ch.) 85), where a married woman had been sued under sect. 12, and judgment recovered, and subsequently a debtor summons was served upon her. There the full Court of Appeal decided that she could not, under the circumstances, be made a bankrupt, as it was in evidence that she had no separate property. *Mellish*, L.J., however, expressed an opinion that the decision might have been different had there been evidence of the existence of separate estate. In spite of certain *dicta* of the Lord Chancellor and *James*, L.J., that the Act had not effected such a change in the *status* of married women as to bring them under the operation of the bankruptcy laws, it is conceived that the decision is an authority for the proposition that a married woman cannot be made bankrupt where she has no separate property, and that the further question indicated by Lord Justice Mellish must be considered as still undecided. The reason formerly given for their immunity, namely, that a married woman could not be sued at law, no longer exists (2 Bright's H. & W. 301; *Marshall v. Rutton*, 8 T. R. 545). See also *Ex parte Carrington* (1 Atk. 206), where a *feme covert* trading by the custom of the City of London, and *Ex parte Franks* (7 Bing. 762), where the wife of a convict, were adjudicated bankrupts.

Bankruptcy.

Re Heneage.

The Act does not affect the disability, to which women have hitherto been subject, with respect to the franchise (*The Queen v Harrauld*, L. R. 7 Q. B. 363).

Franchise.

Privilege between husband and wife.

(g) It is conceived that there is nothing in the statute to vary the rule, by which communications between husband and wife, made during the marriage, are held privileged and inadmissible in evidence, such privilege being based on general grounds of public policy. See Taylor on Evidence, 5th Ed. pp. 802 and 1170, and 16 & 17 Vict. c. 83, s. 3.

Criminal proceedings against husband.

The language of the section is apparently wide enough to enable a wife to proceed criminally against her husband, where necessary for the protection and security of her separate property. It may, however, be contended that the Legislature in giving a civil remedy (sect. 9) in questions between husband and wife, has indicated an intention that that remedy and no other shall be available in questions arising under the Act. In any event it is conceived that there would be considerable practical difficulty in proving the *animus furandi*, if the husband were prosecuted for larceny of his wife's separate chattels.

Whether coverture a disability.

The wife having now a personal right of action in respect of her statutory separate estate, coverture will probably in such cases cease to be a disability within the meaning of the Statutes of Limitation.

Husband endorsing his wife's note of hand.

Query—Whether the statutory right of action here given may not affect the husband's title to his wife's negotiable securities, and whether an endorsee from him of a bill or note made payable to his wife, will not now be held to be put upon inquiry as to the nature of the wife's interest. See and distinguish *Dawson v. Prince* (2 De G. & Jo. 41), where an action had been brought on a bill of exchange payable to the order of D., a married woman, by P., the endorsee for value from D.'s husband, who had forged his wife's name on the back of the bill, and then endorsed his own. D. then filed a bill to restrain the action, but it was dismissed with costs, on the ground that no endorsement by the wife was necessary, and P. took a legal title under the husband's endorsement, and had no notice of D.'s interest. And *query*—Whether the doctrine laid down in *White v. Cohen* (1 Drew. 312) may not be also affected, where, on a bill by a married woman to restrain a nuisance affecting her separate property, her husband not being a co-plaintiff, a doubt was thrown out whether such a bill could be maintained, on the ground of her personal incapacity to maintain an action at law.

Injunction at suit of wife.

XII. A husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage (*h*), but the wife shall be liable to be sued for, and any property belonging to her for her separate use (*i*) shall be liable to satisfy such debts, as if she had continued unmarried.

Husband not to be liable on his wife's contracts before marriage.

(*h*) This section, so far as it relieves the husband from liability, has been repealed by 37 & 38 Vict. c. 50, s. 1. That Act is not retrospective, and a husband married after the 9th of August, 1870, and before the 30th of July, 1874 (the date of the passing of the Amendment Act) is released at law from all liability on the ground of coverture to pay his wife's debts contracted when *sole*, irrespective of the question whether or not he has become entitled to any property in right of his wife. But in equity, where marriage has been made a means of defrauding creditors, as where a woman, having contracted debts, marries without reserving to herself separate property, and her property thereupon becomes vested in her husband in his marital right, it is conceived that the creditors of the wife may by analogy to the case of a fraudulent settlement have a remedy against the husband, to the extent of any property which has come to him in right of his wife. Thus in *Colombine v. Penhall* (1 Sm. & Gif. 228), *Stuart, V.C.*, lays down the principle that "where there is evidence of an intent to defeat and delay creditors, and to make the celebration of marriage part of a scheme to protect property against the rights of creditors, the consideration of marriage cannot support such a settlement" (page 256); see also *Bulmer v. Hunter*, L. R. 8 Eq. 46; 38 L. J. (Ch.) 543.

Husband not liable for wife's ante-nuptial debts.

Whether when marriage a fraud on creditors—*query*.

The section does not apparently affect the husband's liability for his wife's torts or breaches of contract before marriage, for which, as formerly, he remains personally liable; see and distinguish 37 & 38 Vict. c. 50 (Amendment Act), s. 2.

Husband liable for wife's torts and breaches of contract.

(*i*) The creditor's remedy extends, not only to separate property of the wife made such by the Act, but to her equitable separate property generally. Thus in *Sanger v. Sanger* (L. R. 11 Eq. 470;

Separate property liable, though a restraint against anticipation.

19 W. R. 792) a stop order was granted on a settled fund, which had been paid into Court, in aid of a charging order made in an action, in which judgment had been entered up against a married woman, though the fund was subject to restraint against anticipation.

Power to
commit where
judgment
obtained.

Under the old practice, where husband and wife were sued jointly for debts of the wife contracted before marriage, and judgment was obtained against them, the Court refused to discharge the wife from custody under a *ca. sa.*, unless it appeared that she had no separate property (*Ivens v. Butler*, 26 L. J. (Q. B.) 145; *Jay v. Amphlett*, 32 L. J. (Ex.) 176. But now by 32 & 33 Vict. c. 62, s. 5 (2) (The Debtor's Act, 1869), which applies to married women: (*Dillon v. Cunningham*, L. R. 8 Ex. 23), it is enacted that, subject to the exceptions specified in the 4th section, the jurisdiction to commit to prison "shall only be exercised where it is proved to the satisfaction of the Court, that the person making default, either has or has had since the date of the order or judgment, the means to pay the sum, in respect of which he has made default, and has refused or neglected, or refuses or neglects to pay the same."

Under Debtor's
Act, 1870.

Under Irish
Debtor's Act.

In *Nagle v. O'Donnell* (Ir. R. 7 C. L. 79; 21 W. R. Dig. 143), an application to discharge from custody a married woman, arrested in execution on a judgment obtained under this section, was refused, though she had no separate property. The Irish Debtor's Act (35 & 36 Vict. c. 57), which is in similar terms to the English Act, does not appear to have been cited in the case. See also *Beynon v. Jones*, 15 M. & W. 566; *Poole v. Canning*, L. R. 2 C. P. 241; *Dillon v. Cunningham*, *supra*, and note (*i*) to 37 & 38 Vict. c. 50, s. 4.

Married
woman to be
liable to the
parish for the
maintenance of
her husband.

XIII. Where in England the husband of any woman having separate property (*k*) becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband as by the thirty-

third section of "The Poor Law Amendment Act, 1868," they may now make and enforce against a husband for the maintenance of his wife who becomes chargeable to any union or parish (l). Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a *feme sole* by such and the same actions and proceedings as money lent.

(k) The liability of a married woman is not in terms restricted to her statutory separate property. See note (i) to sect. 12.

(l) Under 31 & 32 Vict. c. 122, s. 33 ("The Poor Law Amendment Act, 1865"), when a married woman requires relief without her husband, the guardians or overseers, as the case may be, may apply to the justices in petty sessions for a summons against the husband, requiring him to show cause why an order should not be made upon him to maintain his wife: and thereupon the justices may make an order for the payment of such weekly or other sum by the husband, as may seem right. And under 11 & 12 Vict. c. 43, s. 19, where an order requires payment of a sum of money, justices of the peace are empowered to issue a warrant of distress to levy the same, and in default may commit the person to prison on whom such order is made.

Maintenance,
how enforced.

As to the probable effect of this section in raising the presumption of advancement to a husband where the wife has made investments in his name, see note (m) to sect. 14.

Advancement
to husband.

XIV. A married woman having separate property (m) shall be subject to all such liability for the maintenance of her children as a widow (n) is now by law subject to for

Married
woman to be
liable to the
parish for the
maintenance
of her
children.

the maintenance of her children: Provided always, that nothing in this Act shall relieve her husband from any liability at present imposed upon him by law to maintain her children.

Maintenance
out of separate
property in
Chancery.

(m) The change in the law effected by this section, in making the wife liable to maintain her children out of her separate estate, where the husband's means are inadequate, will, it is submitted; produce a corresponding change in the practice of the Court of Chancery, in its protective jurisdiction over infant wards of Court. Hitherto, the wife being under no legal obligation to support her children during her husband's life, the Court has refused to order contribution towards their support from her separate estate, even in a case where the children were in the greatest destitution, and their mother had eloped from her husband (*Hodgens v. Hodgens*, 4 Cl. & Fin. 323, 373). And see notes to *Eyre v. Countess of Shaftesbury*, 2 Wh. & Tu. L. C. 645, 4th Ed.

Presumption of
advancement.

For the like reason, where a married woman has out of her separate property made a purchase in the name of a child, the presumption of advancement will now apparently arise. See and distinguish *Re De Visme*, 2 De G. Jo. & S. 17.

Investment in
names of hus-
band or
children.

The effect of this and the preceding section being to render the wife liable in certain events to maintain her husband and children, it will be inadvisable to make investments of her separate property in their names, whether jointly with her own or not, since if the wife die leaving any such nominees surviving, the property will, if the above view of the law be correct, pass to them as an advancement, and will not be subject to her disposition by will.

As to the jurisdiction of County Courts over infants, see note (e) to sect. 10; and as to the signification of separate property, see note (i) to sect. 12.

Poor Law
relief of
children.

(n) By 4 & 5 Will. 4, c. 76, s. 56, it is enacted, that "any relief given to or on account of any child or children under the age of sixteen of any widow, shall be considered as given to such widow; provided always that nothing herein contained shall discharge the father and grandfather, mother and grandmother of any poor child, from their liability to relieve and maintain such poor child, in pur-

suance of the provisions of a certain Act of Parliament passed in the forty-third year of the reign of Her late Majesty Queen Elizabeth, intituled "An Act for the Relief of the Poor." And see 4 Burn's J. P. 294 *et seq.*, Ed. 1869.

XV. This Act shall come into operation at the time of the passing of this Act (o). Commence-
ment of Act.

(o) This Act was passed on the 9th day of August, 1870.

XVI. This Act shall not extend to Scotland. Act not to
extend to
Scotland.

XVII. This Act may be cited as the "Married Women's Property Act, 1870." Short title.



MARRIED WOMEN'S PROPERTY ACT (1870) AMENDMENT ACT, 1874.

(37 & 38 VICT. CAP. 50.)

An Act to amend the Married Women's Property Act
(1870). [30th July, 1874.]

WHEREAS it is not just that the property which a woman has at the time of her marriage should pass to her husband, and that he should not be liable for her debts contracted before marriage, and the law as to the recovery of such debts requires amendment :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. So much of the Married Women's Property Act, 1870, as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is repealed so far as respects marriages which shall take place after the passing of this Act, and a husband and wife married after the passing of this Act may be jointly sued for any such debt (*p*). Husband and wife may be jointly sued for her debts before marriage.

(*p*) The object of the Amendment Act, which is not retrospective, is, as indicated in the preamble, to amend the law as to the recovery of debts incurred by the wife before marriage. By the 12th section Act not retrospective.

Husband's liability for wife's ante-nuptial debts.

Extent to which husband liable.

of the Act of 1870 the husband was relieved from liability to pay these debts, though he might still, as before the Act, become entitled to property in right of his wife. He may now be sued jointly with his wife, and judgment be recovered against him to the extent of the assets specified in s. 5. As to the effect of a joint judgment against husband and wife, see note (t), sect. 4.

2. The husband shall, in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage, or by reason of the breach of any contract made by the wife before marriage (q), be liable for the debt or damages respectively to the extent only of the assets hereinafter specified; and in addition to any other plea or pleas may plead that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified; or, confessing his liability to some amount, that he is not liable beyond what he so confesses; and if no such plea is pleaded the husband shall be deemed to have confessed his liability so far as assets are concerned (r).

Husband jointly liable for wife's debts, torts, and breaches of contract before marriage.

His liability limited to "assets."

Plea of "no assets," or assets to an amount confessed.

(q) The exception created by the 12th section of the principal Act being now removed (see note (h), p. 47), the husband is, as formerly, liable to be sued jointly with his wife for her debts incurred, and torts or breaches of contract committed, before marriage. ('Bullen and Leake's Precedents,' 3rd Ed., pp. 171, 338.)

(r) The effect of the present section is, to limit the husband's liability to the extent of his assets as defined in section 5, and, where the issue has been raised by plea, to relieve him from a general personal responsibility in such actions as are mentioned in this section. In any such action the husband may now plead "no assets," or that he is liable only to an amount confessed; and thereupon may show in avoidance, or diminution *pro tanto*, of his liability, the amount of any debts of his wife, which he has paid since his marriage, or of any judgment *bonâ fide* recovered

against him under this Act. If no such plea is pleaded, he is to be deemed to have confessed his liability as regards assets, and cannot claim the benefit of the third section.

3. If it is not found in such action that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife (s).

If husband without assets he shall have judgment for costs.

(s) This section is ambiguously worded, and must apparently be read, "if it *is* found in such action, that the husband is *not* liable," otherwise, though he has omitted to plead "no assets," he might, after having raised unsuccessfully other defences, claim his costs, on the ground that there had been no finding of his liability in assets.

4. When a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife (t).

Joint and separate judgment against husband and wife for debt.

(t) Under the general practice at Law, when a joint judgment has been recovered against the husband and wife, the creditor may proceed under his judgment against the husband's property, and the wife's separate estate; and, where an order for commitment has been obtained, the wife is not entitled to her discharge, except on proof that she has no separate estate. (*Ivens v. Butler*, and cases cited, p. 48). Where, however, judgment has been recovered against the wife solely, it has been decided, that she is not entitled to be discharged, though it be shown that she has no separate property (*Beynon v. Jones*, and cases cited, p. 48). Moreover, a joint judg-

Practice at law under joint judgment.

Under separate judgment against wife.

ment as against the wife is gone at Law, though not in Equity, when the husband has obtained his discharge under the bankrupt laws (*Chubb v. Stretch*, L. R. 9 Eq. 555).

Practice under
the 4th
section.

By analogy to this practice it appears that a judgment-creditor under this section may proceed on his joint judgment against both the husband's assets and the wife's separate estate, and may in addition have the benefit of the separate judgment against the wife, in the event of his remedy under the joint judgment proving abortive or insufficient. The construction to be put upon the section is not free from doubt, and it may be contended that the intention is, that, as regards the husband's assets, the judgment shall be joint, and as to the residue a judgment against the wife binding her separate estate. The effect, however, of such a construction, if adopted, would be wholly to exonerate the separate estate, where the husband confesses, or is otherwise found liable for, the full amount of the debt or damages, even though nothing were ultimately recovered under the joint judgment. For "the residue," it is to be observed, is to be ascertained by deducting the amount for which the husband is liable, not that which may ultimately be recovered under the joint judgment.

Construction
of the section
ambiguous.

"Residue" how
ascertained..

In complex
cases remedy
in Equity.

Where the amount of assets is matter of account, or is for other reasons incapable of being ascertained at *Nisi Prius*, the creditor's remedy will probably be in equity, by bill in the nature of a bill for administration.

Assets for
which husband
liable.

5. The assets in respect of and to the extent of which the husband shall in any such action be liable are as follows (u):

- (1.) The value of the personal estate in possession of the wife, which shall have vested in the husband:
- (2.) The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession:

- (3.) The value of the chattels real of the wife which shall have vested in the husband and wife :
- (4.) The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received :
- (5.) The value of the husband's estate or interest in any property, real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person :
- (6.) The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors (*v*) :

Provided that when the husband after marriage pays any debt of his wife, or has a judgment *bonâ fide* recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable (*w*).

(*u*) Notwithstanding the preamble, it appears, that "assets" under this section are, not only "property which a woman has at the time of her marriage," and which then passes to her husband in his marital right, but include property vesting in him *jure mariti* after the marriage. The fact, that rents and profits are made assets by § 4 goes to show that the wider construction must be adopted. Indeed to hold otherwise would be to let in much of the mischief, which the Amendment Act was intended to remedy. As to what property of the wife vests in the husband, see note (*x*), p. 34; and that the preamble cannot be held to control the enacting portion

Assets include property coming to the wife after marriage.

of an Act, see observations of Lord Cairnes in *The Hammersmith Railway Company v. Brand*, L. R. 4 H. L. 217.

What are
"assets," for
which the
husband is
liable.

(v) The husband is liable to be charged with the value of the following classes of property, to which, when there is no separate use, he has an actual or inchoate title: the personal chattels and estate in possession of the wife (§ 1), her choses in action which he has, or with reasonable diligence might have, reduced into possession (§ 2); her chattels real (§ 3), which will, it is conceived, be limited to those interests to which the husband alone in his marital right can make a good title, and will not include those to the conveyance of which the wife is a necessary party, *e.g.* her equitable terms of years, and such reversionary terms, as cannot from their nature vest in possession during the husband's life (Dart's V. & P., 3rd Ed. p. 8); the rents and profits of her real estate, which he has, or with reasonable diligence might have, received (§ 4); any interest which he takes in his wife's property under any ante-nuptial settlement or transfer, or which any other person holds as trustee for him, including, as it appears, any property which has been settled by his wife in fraud of his marital rights (§ 5); and any property which his wife with his consent has transferred to any person with the view of defeating her existing creditors (§ 6).

What debts
the husband
may set off
against assets.

(w) Debts of the wife, for the payment of which the husband may claim credit, must mean debts for which the wife is liable, and will not include those which she contracts as agent of her husband. The provision as to judgments, which immediately follows, appears to indicate that such debts are debts contracted by her before marriage, and will therefore not include separate post-nuptial debts, for which the wife is liable in her separate estate. (*Johnson v. Gallagher*, p. 5, *supra*.)

What judgments.

It is to be noted that the husband may claim the benefit of this proviso, where judgment has been *recovered* merely, irrespective of the question whether or not it has been satisfied.

Extent of Act.

6. This Act shall not extend to Scotland.

Short title.

7. This Act may be cited as the "Married Women's Property Act (1870) Amendment Act, 1874."

APPENDIX.

BULLPIN *v.* CLARKE.Rolls, Dec. 4,
1810.

(17 Ves. 365.)

By indentures dated the 2nd and 3rd May, 1806, previous to the marriage of the defendants John and Margaret Clarke, the several real estates, to which Margaret Clarke was entitled under the will and settlement of her former husband, were conveyed to the defendants Parnell and Lloyd and their heirs; to the use, after the marriage, of Parnell and Lloyd and their heirs; upon trust to receive the rents and profits, and pay the same to such person or persons, for such uses, intents and purposes, as Margaret Clarke should at any time during her life, notwithstanding her coverture, direct or appoint; and, in default of such direction or appointment, to pay the same into the proper hands of Margaret Clarke for her sole and separate use and benefit; and all the debts, ready money, rings, jewels, plate, linen, pictures, household goods, furniture, and other the personal estate, of Margaret Clarke were assigned to Parnell and Lloyd, their executors, administrators and assigns, in trust to or for the sole and separate use of Margaret Clarke, and to be applied and disposed of as she should appoint or direct.

Decree for payment of a debt by the promissory note of a married woman out of the rents and profits settled to her separate use for life.

By other indentures of the same date the estate of John Clarke were conveyed to the same trustees, to the use after the marriage, of John Clarke for life without impeachment of waste; and from and after his decease, to the use of Margaret Clarke and her assigns for life, with remainders over.

The bill was filed against Clarke and his wife and the trustees, stating, that in 1806 Margaret Clarke requested the plaintiff to lend her 250*l.*, which she promised should be repaid to him with interest

out of her separate property, and the plaintiff knowing that she had such separate property accordingly advanced her that sum for her separate use, and she gave him her promissory note for the sum of 250*l.* with lawful interest upon demand, dated the 4th of October, 1806. By a letter of Mrs. Clarke to the plaintiff, in answer to an application for repayment, she expressed herself thus:

" Having received a letter from Parnell, that you are very anxious for your money, if you believe me, when I assure you, I am doing all I can to forward it and hope to accomplish it soon;" stating, further, that she had some property of one of her tenants, but could not turn it into cash till the grain was thrashed out; that her husband was going to Gloucestershire, where he expected to receive a large sum of money, " and will from thence remit you upon my account the 250*l.* with interest due thereon;" and that some time ago she requested Mrs. B. to say that she would remit him his money as soon as possible.

The bill charging that the trustees are in possession and receipt of the rents and profits for the separate use of Margaret Clarke, and also hold personal property, as trustees for her separate use, and that the 250*l.* is wholly her separate debt, and was received by her, and applied for her own use, and was advanced and lent by the plaintiff on the faith and credit of her separate estate and property, prayed payment out of the rents and profits, or otherwise out of her separate property, an account of the debt and interest and of the separate property received by the trustees; and if it shall appear that she is herself in possession, that a receiver may be appointed.

The note and the letter were admitted by the answer.

Mr. Hart and Mr. Roupell for the plaintiffs.

Sir Samuel Romilly for the defendants.

Judgment.

This is a new and important question. The promissory note is not the execution of a power, an appointment of any part of this settled property, and has no reference to it, constituting merely a debt by simple contract. There is no authority establishing the right of a court of equity to apply the rents and profits of the separate estate of a married woman to the payment of a debt. (*Cur. adv. vult.*)

The decree directed the trustees to receive the rents and profits

of the several estates in the indenture mentioned; that an account should be taken of what was due to the plaintiff for principal, interest, and costs, upon the note of the defendant Margaret Clarke; and that the trustees shall pay to him what shall be found due in respect of such principal, interest, and costs, out of such rents and profits; that they shall account annually for the rents and profits; and pay to the plaintiff the balance, which shall from time to time be reported due, until the principal, interest, and costs shall be fully paid.*

MOHENRY v. DAVIES.

(L. R. 10 Eq. 88.)

March 8,
1870.

This was a suit by an English banker at Paris against the defendant, a married woman, to make her separate estate liable for two sums of 146*l.* and 80*l.*, being the amounts of a bill of exchange and of a cheque, which he had cashed for her or her agent.

The defendant was entitled to considerable property settled to her separate use. She was staying alone in Paris in the year 1867, for the purpose of medical advice. She was not separated from her husband, but he did not accompany her to Paris. The plaintiff stated that he believed her to be unmarried, as she was to all appearance a *feme sole*. She drew cheques in her own name on her London bankers, Messrs. Robarts, Lubbock, & Co., and when they were presented to the plaintiff for payment, he wrote to them to inquire whether she was a responsible person, and they replied that she was a person of the highest standing and respectability, and responsible for a larger amount than that specified.

The defendant employed one Tyrwhitt as her agent and amanuensis; who, in February, 1867, presented to the plaintiff a bill of exchange for 146*l.*, drawn by him upon Messrs. Foster & Payne of London, payable three months after date, and endorsed by the defendant. The plaintiff, relying on the defendant's solvency, discounted the bill, and gave the proceeds to Tyrwhitt.

During the currency of the bill, Tyrwhitt presented to the plaintiff

The defendant, a married woman living abroad, alone, under circumstances which led to the belief that she was a *feme sole*, indorsed a bill of exchange, and drew a cheque on her London bankers for the purpose of enabling T., who acted as her agent, to raise money. The bill and cheque were cashed by M., the plaintiff, a banker at Paris, but were dishonoured.

Held, that the separate estate of the married woman was liable to make good the amount, irrespective of any equities between her and T.

* For decree see Form V., p. 82.

a cheque for 80*l.*, drawn by the defendant on her London bankers, payable to Tyrwhitt or bearer, which the plaintiff also cashed.

Tyrwhitt was insolvent. The bill was dishonoured at maturity, and the cheque was refused payment by the London bankers, who had received orders in the meantime from the defendant, not to pay the sums in question.

The plaintiff by his bill prayed that the defendant might be declared to be indebted to the plaintiff in respect of the two sums, and liable to make good the amount out of her separate estate.

The principal defence to the suit was that the defendant endorsed the bill and signed the cheque to enable Tyrwhitt to raise money upon them; that Tyrwhitt was indebted to her; that the charge (if any) was in equity, and therefore subject to equities, and to making good what Tyrwhitt owed her; and that an account must therefore be taken between Tyrwhitt and herself.

Mr. Swanston, Q.C., and *Mr. Jackson*, for the plaintiff, contended that as the defendant, when she endorsed the bill of exchange and signed the cheque, was living apart from her husband, and to all appearance a *feme sole*, and the plaintiff had advanced the money on that supposition, and without being aware that she was married, her separate estate was liable to make good the amount. They referred to *Johnson v. Gallagher* (3 De G. F. & J. 494), *Matthewman's Case* (L. R. 3 Eq. 781), and *Picard v. Hine* (L. R. 5 Ch. 274).

Mr. Jessel, Q.C., and *Mr. Freeling*, for the defendant, contended that these sums were not a charge upon her separate estate at all, and, if they were, they were subject to the equities between the defendant and Tyrwhitt, as the defendant put her name to the documents merely for the purpose of enabling Tyrwhitt to raise money.

April 26. LORD ROMILLY, M.R.:—

The law is quite settled to this extent, that though a married woman cannot enter into a contract, she can charge her separate estate; but as this separate estate and the charges on it are the creatures of equity, the charges must be subject to the equities, if any; but this does not mean indiscriminate equity, which would enable a person owing money to a married woman to obtain money from others under the erroneous belief, that they would have the security of her separate estate. It is always a question of fact,

and the circumstances must first be considered in order to determine what legitimate inferences may be drawn from them.

I am of opinion that, as between a single woman and the plaintiff, she would be liable to make good to the plaintiff the money advanced on the faith of her signature. But upon the simple fact that an English lady, possessed of separate property, in order to enable her agent to raise money, signs her name on a piece of paper intimating that she will be liable to pay the amount, I am of opinion that when he has so raised the money, on the faith of the credit given by the signature of her name, she cannot afterwards dispute her liability, and say that she is not liable to make good the amount out of the property at her disposal.

It is a fundamental principle of equity, that if a *feme covert* employs a person in the situation of Tyrwhitt to act as her agent and amanuensis, and afterwards gives documents to the same person, with her name on them, for the express purpose of enabling him to raise money on the credit of her name, she is liable to make good out of her separate estate, to the person advancing money on the faith of her name, the amount which he has so advanced. Were it otherwise, it would be merely making this Court a party to defrauding an innocent man out of money, which he could have no notice or suspicion would not be repaid. How is he, in the absence of express information, to know for whom the money is required, or subject to what conditions as between herself and her servant the documents are intrusted to him? In my opinion there are only two things which are necessary to be proved in this case: the first is, that the money was given on the credit of the defendant's name, with her knowledge and sanction; and the second is, that by her actions she held herself out as a *feme sole*, or, at least, as a woman whose separate property would repay advances made to her.

The first proposition is, in my opinion, abundantly proved by the evidence in the cause; the second proposition is also in my opinion established.

Here is a lady, not indeed legally separated from her husband, but residing alone in Paris for above three months for the benefit of medical advice, having a separate account at her bankers', paying her bills and accounts and the like with her own money, and acting like a woman who had no husband. Everything about her tending to

confirm this impression, I think that she cannot afterwards be heard to say that she was a *feme covert*, and that she is not liable to have her separate property applied to make good the money that was paid to her, or for her benefit. I adopt the expression of Lord Justice Turner, in *Johnson v. Gallagher* (*supra*, p. 8), where, referring to a married woman, who, having separate estate and living from her husband, contracts debts, his Lordship observes, "The Court is bound to impute to her the intention to deal with her separate estate, unless the contrary is clearly proved."

I am of opinion that a decree must be made in substance, according to the prayer of the bill, for any inquiry as to what the separate estate of the defendant consists of, and for an account of what is due to the plaintiff on the bill and cheque, and payment to him out of the defendant's separate estate of the amount so found due, and also the costs of the suit.

GREEN v. GREEN.

(5 HARE, 400 n.)

Where houses and furniture had been settled to the separate use of A. for life, on bill by A. to restrain her husband, from whom she had separated owing to his misconduct, from receiving the rents and profits of the houses, and from continuing in possession of a certain messuage.

Held, that the plaintiff was entitled to the relief prayed, although, in effect, it might operate as a divorce *a mensâ et thoro*.

The bill, which was brought by Ann Green, wife of Samuel Francis Green, by her next friend, against the said Samuel Francis Green and others, stated that, by an indenture dated the 8th of June, 1836, being a settlement made in contemplation of a marriage of the plaintiff and her said husband, certain leasehold premises in Whiting Street, Thomas Street, and Little Thomas Street, Lambeth, and certain furniture, fixtures, and effects, were bargained, sold, and assigned to Thomas Britchford and Allan M'Millan, upon trust for the sole and separate use of the plaintiff, notwithstanding her then intended coverture, for her life, with remainder to the said Samuel Francis Green for his life, with remainders to certain other persons. That the marriage took place on the 21st of June, 1836. That the said Samuel Francis Green and the plaintiff had for some time past, by reason of improper conduct on the part of the said

Samuel Francis Green, lived separate and apart from each other. That Samuel Francis Green, without the consent of the plaintiff, had entered into receipt of the rents and profits of the settled premises, had distrained the goods of some of the tenants, and had possessed himself and sold and disposed of some of the furniture and effects, and had applied such rents and proceeds to his own use; that he had also taken possession of the house No. 2, Whiting Street, and threatened in like manner to possess himself of a sum of 30*l.* belonging to the Plaintiff, in the Lambeth Savings Bank, being part of the settled property.

The bill prayed an account of the trust property, furniture, and effects, possessed by the defendant, Samuel Francis Green, and that he might be decreed to pay into Court what should be found due from him; that the defendant, Samuel Francis Green, might be restrained by injunction from taking proceedings to recover or receive the rents and profits of the trust property or otherwise intermeddling or interfering with the trust estates, furniture, and effects, and from continuing in possession of the house, No. 2, Whiting Street. The bill also prayed that new trustees might be appointed, and, in the meantime, for a receiver.

The plaintiff, upon affidavit, obtained an injunction (November 4, 1839), restraining the defendant, Samuel Francis Green and his agents, from receiving or taking any proceedings to recover possession of the money in the Savings Bank, or the interest thereof; and from taking any further and other proceedings, by distress or otherwise, against the tenants or occupiers of the pieces or parcels of ground, messuages or tenements, hereditaments, and premises, or other the trust estates; and from receiving the rents and profits thereof, or otherwise intermeddling or interfering with the trust estates, furniture, effects, moneys, and premises; and from continuing in possession of the house and premises, No. 2, Whiting Street, until answer or other order.

The defendant, Samuel Francis Green, by his answer, said that an indenture of settlement had been executed previous to his marriage with the plaintiff, merely to obviate the interference of other persons, but that it was agreed between himself and the plaintiff, that after the marriage it should be destroyed. He said, that immediately after the marriage he had entered into possession

or receipt of the rents of the property; that the property had been rated in his name in the parochial books; that he had caused distresses to be levied on tenants for non-payment of rent; and that he had possessed himself of the furniture and effects, and occupied the house, No. 2, Whiting Street, where the plaintiff resided, with her consent and concurrence; but he denied that he had sold or disposed of any part of the furniture or other property. The defendant, after putting in his answer, moved to dissolve the injunction.

Mr. Dixon, for the motion, insisted that the injunction, in restraining the husband from continuing in possession of the house, in which the wife resided, and from interfering with the furniture comprised in the settlement, operated as a divorce *à mensâ et thoro*; and that in no case had the Court carried a trust for separate use to that extent.

Mr. Bilton contra, cited *Newlands v. Paynter*, 4 My. & Cr. 408.

The Vice-Chancellor of England said, that this Court had only to consider whether a trust for the separate use of a wife was created. There was nothing unlawful in the settlement, and he saw nothing to prevent the Court from protecting the interests of the parties under it. If the injunction had the effect attributed to it, a question which he could not determine, the husband would not be without his remedy in the Ecclesiastical Court.

Motion refused, with costs.

NOTE.—This case has recently been followed by Vice-Chancellor Malins in *Wood v. Wood* (19 W. R. 1049), where a private hotel, and the business of hotel-keeper, had been by post-nuptial deed settled by the husband on his wife, she carrying on the business in “the same manner as if she were a *feme sole*, and paying the rents.” The husband subsequently by his conduct rendered it impossible to carry on the business; and, on bill by the wife, an injunction was granted restraining him from in any way interfering with the conduct of the business, “and from continuing in possession of the said private hotel and premises or any part thereof.”

SWANBOROUGH v. HENDERSON.

The plaintiff in this case was Mrs. Swanborough, the lessee of the Strand Theatre. In the year 1868 the defendant Lydia Henderson, known professionally as Lydia Thompson, was under an engagement with the plaintiff, by which she bound herself to act exclusively at the Strand Theatre for a term certain. In July of that year Lydia Henderson, being desirous of accepting an engagement in America, entered into a contract with the plaintiff on the following terms:—

“London, 24th July, 1868.

“In consideration of Mrs. Swanborough giving me one-half clear benefit on Friday, July 31, 1868, and allowing me to cancel my present engagement at the Royal Strand Theatre on and after August 10, 1868, to enable me to proceed to America, to fulfil an engagement there, I hereby agree to give Mrs. Swanborough the refusal of my exclusive services, immediately upon my return from such engagement in America, for one season at a salary of 20*l.* per week playhouse pay, and one-half clear benefit, during the season, subject to the rules and regulations of the said Royal Strand Theatre. I am to give Mrs. Swanborough notice of my arrival in London, on my return from America, and my services are to be at her disposal upon her giving me three days’ notice, but should the said Mrs. Swanborough decline to accept the same within two clear weeks of my arrival in England, I am then at liberty to make other engagements.

(Signed) “LYDIA THOMPSON.”

The plaintiff performed the contract on her part, but the defendant Lydia Henderson, on her return from America in 1874, declined to accept an engagement at the plaintiff’s theatre, though requested so to do. On the 8th of August advertisements appeared in the daily papers, announcing Miss Thompson’s intended appearance at the Charing Cross Theatre.

After some correspondence the present bill was filed, on the 24th of August, 1874, against Mr. and Mrs. Henderson, praying for an injunction to restrain the defendant Lydia Henderson from performing at any theatre, other than the theatre of the plaintiff, or

V.-C. H. Sept.
9, 1874.

H., a married woman, in consideration of being released from an existing engagement at plaintiff’s theatre, agreed in writing to give the plaintiff “the refusal of her exclusive services” for one season on her return from America. *H.* subsequently declined to perform the contract.

Held, That the contract having been entered into with reference to *H.*’s separate employment, the Court had jurisdiction to grant an injunction, and would order damages to be paid for the breach.

otherwise appearing in her artistic capacity before the public, otherwise than for the plaintiff, for one season, to commence from the filing of the bill, and for damages.

It appeared from the evidence that differences existed, and litigation was pending, between the defendants and the plaintiff, with reference to certain pecuniary claims against the plaintiff of the defendant Alexander Henderson.

An *interim* injunction having been obtained, the plaintiff now moved that the same might be continued against the defendants until the hearing of the cause.

E. Cutler for the plaintiff. The defendant Lydia Henderson is a married woman following the profession of an actress, and as such carrying on a separate occupation within the meaning of the "Married Women's Property Act, 1870." She has entered into a contract with reference to her profession, and is therefore as much bound by it as though she were a *feme sole*.

Montague Williams and *Bradford* for the defendants, argued that on the true construction of the contract, it was no longer binding on the defendants, as the "one season" there referred to expired according to theatrical usage in July.

Montague v. Flockton, L. R. 16 Eq. 189; 21 W. R. 668 was cited.

Hall, V.-C., at the conclusion of the arguments, suggested that, as there were cross claims between the parties, and matters involving questions of theatrical usage, the question of damages should be left to be determined by referees to be named by the parties. This suggestion being accepted by the counsel, His Honour stated that he had no doubt as to the jurisdiction, or to the right of the plaintiff to the relief sought by her bill. Under the arrangement which had been come to it was unnecessary to continue the injunction, but the defendants in addition to damages must pay all the costs of the suit.

M'GOVERN *v.* HINKEY.*(Solicitor's Journal, Jan. 17, 1874.)*

This was a case heard on the 6th of January, 1874, before J. A. Russell, Esq., Q.C., Judge of the Manchester County Court.

The plaintiff, John M'Govern, haberdasher, Union Street, Manchester, sued the defendant, Margaret Hinkey, draper, 95, Lord Street, Southport, for a sum of 15*l.* 12*s.*, the balance of a debt of 35*l.*, which she had contracted with the plaintiff, and the remainder of which she had paid in instalments.

Mann, who appeared for the plaintiff, said the defendant was a married woman, living apart from her husband, supporting and maintaining herself by her own industry, and receiving no assistance from her husband, whom she had not seen for five years. The question which would arise in the case was whether she was liable for debts apart from her husband. She was carrying on a separate business of her own in Southport, and he might take it that she was carrying on the business in accordance with the first section of the Married Women's Property Act, and that all the property which she had become entitled to since she had been carrying on the business separately would be her separate property, held for her separate use independently of her husband. She was, therefore, clearly possessed of property independently of her husband, and the 11th section of the Married Women's Property Act gave her the power to sue for any debts that might be owing to her in respect of that property. There was certainly no section in the Act imposing on a wife a liability to be sued in her own name, but he suggested that the fact of the Act having vested property separately in her, and given her the exclusive control over it, implied a liability in her to pay debts in respect of that property or the business by which she acquired it. Taking it as a matter of contract, he contended that the fact of a husband allowing a wife to carry on business separate and apart from him impliedly conferred upon her a power to contract debts in her own name. It was clear that in equity a married woman must bind her separate estate by a contract, and it

Although the Married Women's Property Act, 1870, confers upon a married woman the power of suing for earnings acquired in her separate trade, it does not render her liable to be sued upon contracts entered into by her in the course of such trade.

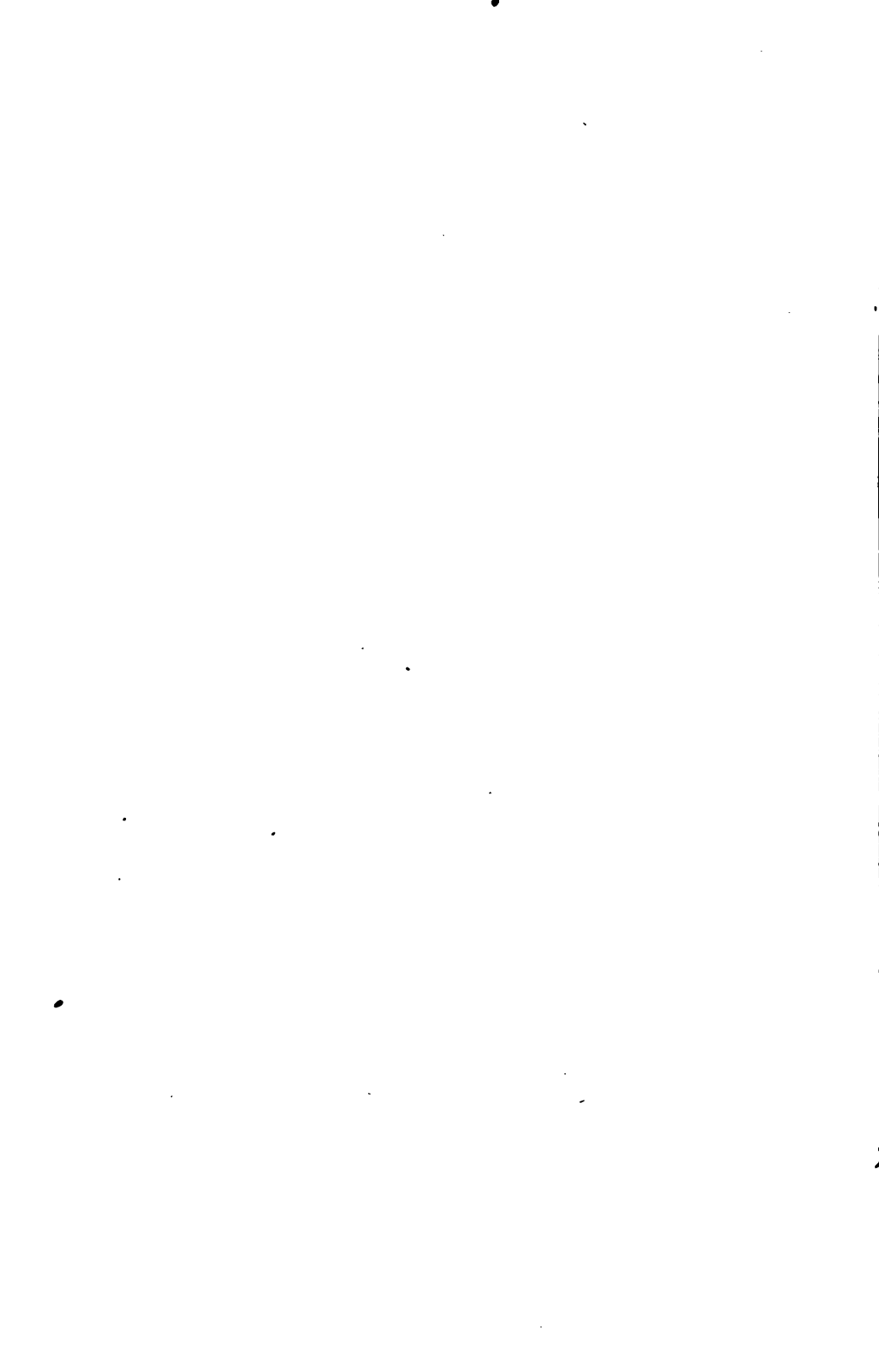
was a question whether she had not power to do so by law. This property in her business was vested in the defendant, and it was only a reasonable inference that a wife should be enabled to bind her separate estate by a contract.

Smith argued that, as far as the Married Women's Property Act was concerned, there was no implied liability such as that contended for, because if there had been any intention to set aside a long-established principle of law, there would have been an express provision to that effect. There was no question of separate estate in this case, and no pretence that the wife had pledged her separate estate.

His Honour said he was not aware that this question had ever been raised before. The defendant was a married woman, living separate from her husband, and carrying on business separately from him, and the goods in respect of which she was sued were goods supplied to her in the way of trade. Certain payments had been made on account of those goods, and she was now sued for the balance remaining due. In answer to the claim the defendant set up the plea of coverture, and the question was whether the plea was a good defence. It was perfectly clear that at common law it would be a good defence, for a married woman had no power to contract such a debt as that in question by the common law. But it was suggested that under the Married Women's Property Act, sections 1 and 11, the liability contended for in the present case was imposed upon a married woman, not expressly, but by implication. From the language of the 1st section, it struck him that it was merely enabling. It gave a married woman the power to acquire property for her separate use, and it did not impose any liability on her that she was not subject to before. By the 11th section a married woman was empowered to maintain an action in her own name to recover earnings or other property declared by the Act to be her separate property. That was clearly an enabling enactment, and such being the case the question was, whether he was to infer, that not only had this ability been created, but that a liability had been likewise imposed. Inasmuch as the statute did not impose any liability in respect to the property mentioned in sections 1 and 11, the liability of the woman stood just as it did at common law. But did not the statute itself

show that, in expressly making her (in section 12) liable in respect to debts contracted before marriage? He would not, therefore, go beyond the letter or spirit of the Act, which was clearly enabling to a woman, but not rendering her subject to any liability except such as was expressly imposed upon her. He thought the liability of the defendant stood just as it did in common law, and she was not, therefore, liable in this action. He dismissed the case.

Smith, on behalf of the defendant, applied for costs, which were granted.



COURTS OF PROBATE AND DIVORCE.

(20 & 21 VICT. CAP. 85.)

An Act to amend the Law relating to Divorce and Matrimonial Causes in England. [28th August, 1857.]

§ 21. A wife deserted by her husband may at any time after such desertion, if resident within the metropolitan district, apply to a police magistrate, or, if resident in the country, to justices in petty sessions, or in either case to the Court, for an order to protect any money or property she may acquire by her own lawful industry, and property which she may become possessed of after such desertion against her husband or his creditors, or any person claiming under him; and such magistrate or justices, or Court, if satisfied of the fact of such desertion, and that the same was without reasonable cause, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and property acquired since the commencement of such desertion from her husband and all creditors and persons claiming under him, and such earnings and property shall belong to the wife as if she were a *feme sole*: Provided always, that every such order, if made by a police magistrate or justices at petty sessions, shall, within ten days after the making thereof, be entered with the Registrar of the County Court within whose jurisdiction the wife is resident; and that it shall be lawful for the husband and any creditor or other person claiming under him to apply to the Court, or to the magistrate or justices by whom such order was made, for the discharge thereof, provided also, that if the husband or any creditor or other person claiming under the husband shall seize or continue to hold any property of the wife after notice of any such order, he shall be liable at the suit of the wife (which she is hereby empowered to bring) to restore the specific

Wife deserted by her husband may apply to a police magistrate or justices in petty sessions for protection.

property, and also for a sum equal to double the value of the property so seized or held after such notice as aforesaid. If any such order of protection be made, the wife shall, during the continuance thereof, be and be deemed to have been, during such desertion of her, in the like position in all respects with regard to property and contracts, and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

In case of a judicial separation, the wife to be considered a *feme sole* with respect to property she may acquire, &c.

§ 25. In every case of a judicial separation, the wife shall, from the date of the sentence, and whilst the separation shall continue, be considered as a *feme sole* with respect to property of every description which she may acquire or which may come to or devolve upon her; and such property may be disposed of by her in all respects as a *feme sole*, and on her decease the same shall, in case she shall die intestate, go as the same would have gone if her husband had been then dead: Provided that if any such wife should again cohabit with her husband, all such property as she may be entitled to when such cohabitation shall take place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband while separate.

Also for purposes of contract and suing.

§ 26. In every case of a judicial separation, the wife shall, whilst so separated, be considered as a *feme sole* for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any engagement or contract she may have entered into or for any wrongful act or omission by her, or for any costs she may incur as plaintiff or defendant: Provided, that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same shall not be duly paid by the husband, he shall be liable for necessities supplied for her use: Provided also, that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

COURTS OF PROBATE AND DIVORCE AMENDMENT ACT.

(21 & 22 VICT. CAP. 108.)

An Act to amend the Twentieth and Twenty-first Victoria,
Chapter Eighty-five. [2nd August, 1858.]

§ 7. The provisions contained in this Act, and in the said Act of the twentieth and twenty-first Victoria, chapter eighty-five, respecting the property of a wife who has obtained a decree for judicial separation or an order for protection, shall be deemed to extend to property to which such wife has become or shall become entitled as executrix, administratrix, or trustee since the sentence of separation or the commencement of the desertion (as the case may be); and the death of the testator or intestate shall be deemed to be the time when such wife became entitled as executrix or administratrix.

Provisions respecting property of wife to extend to property vested in her as executrix, &c.

§ 8. In every case in which a wife shall under this Act or under the old Act of the twentieth and twenty-first Victoria, chapter eighty-five, have obtained an order to protect her earnings or property, or a decree for judicial separation, such order or decree shall, until reversed or discharged, so far as necessary for the protection of any person or corporation who shall deal with the wife, be deemed valid and effectual; and no discharge, variation, or reversal of such order or decree shall prejudice or affect any rights or remedies which any person would have had in case the same had not been so reversed, varied, or discharged in respect of any debts, contracts, or acts of the wife incurred, and entered into, or done between the times of the making such order or decree, and of the discharge, variation, or reversal thereof, and property of or to which the wife is possessed or entitled for an estate in remainder or reversion at the date of the desertion or decree (as the case may be) shall be deemed to be included in the protection given by the order or decree.

Order for protection of earnings, &c. of wife to be deemed valid.

FORM I.

IN CHANCERY.

LORD CHANCELLOR.

VICE-CHANCELLOR.

Bill to charge
the separate
estate of a
sole trader by
creditor hold-
ing her note
of hand.

Between *A. B.* *Plaintiff,*
and
C. D. and E. (his wife). *Defendants.*

BILL OF COMPLAINT.

To the Right Honourable Hugh MacCalmont, Baron Cairns
of Garmoyle in the County of Antrim, Lord High
Chancellor of Great Britain.

Humbly complaining, sheweth unto his Lordship, *A. B.*, of
[*address and description*], the above-named Plaintiff as follows:—

1. The defendant *E. D.*, at the date of the loan by the plaintiff
hereinafter mentioned, was and still is a married woman carrying
on the trade of upholsterer, separate from her husband, the defend-
ant *C. D.*, within the meaning of the "Married Women's Property
Act, 1870," s. 1.

2. On the day of the defendant *E. D.* requested the
plaintiff to lend her the sum of £200 for the purposes of her said
business, which the plaintiff consented to do, on having the repay-
ment of the said sum of £200 with interest thereon at the rate of
£5 per cent. per annum secured by the note of hand of the defendant
E. D.

3. In pursuance of the said agreement, on the day of
the plaintiff advanced the said sum of £200 to the defendant *E. D.*,
and she thereupon gave to the plaintiff her note of hand for the said
sum with interest at the rate aforesaid.

4. The interest on the said sum of 200*l.* being in arrear the plain-
tiff on the day of applied to the defendant *E. D.*
for the repayment of the said principal sum and interest, but the
defendant *E. D.* has hitherto omitted and refuses to pay the same
or any part thereof.

5. The stock-in-trade, assets, and effects of the defendant *E. D.*
in her said separate business are of very considerable value. The
defendant *E. D.* is also entitled to certain real estate to her separate

use in fee, but the said stock-in-trade, assets, and effects, and also the said real estate are at law vested in the defendant *C. D.* in right of his wife, the defendant *E. D.* The defendant *C. D.* is, as the plaintiff is advised, a necessary party hereto.

6. The plaintiff advanced the said sum of 200*l.* to the defendant *E. D.* on the faith and credit of her said separate estate, and under the circumstances aforesaid the said sum of 200*l.* and interest thereon at the rate aforesaid is payable to the plaintiff out of the said separate estate.

PRAYER.

The plaintiff prays as follows :—

1. That it may be declared that the separate estate of the defendant *E. D.* vested in her or in the defendant *C. D.* in right of the said *E. D.* is chargeable with the repayment to the plaintiff of the said sum of 200*l.* and interest at the rate of 5*l.* per cent. per annum.
2. That an account may be taken of what is due to the plaintiff for principal and interest upon the note of hand of the defendant *E. D.*
3. That the defendant *C. D.* may be directed to receive the rents and profits of the said real estate, and to get in and collect and convert into money the assets and effects of the said separate business of the defendant *E. D.*, and thereout to pay to the plaintiff what on taking the aforesaid account shall be found due to him.
4. That if necessary a receiver may be appointed of the said rents and profits, assets and effects.
5. That the plaintiff's costs of this suit may be paid to him out of the separate estate of the said *E. D.*
6. (*Necessary accounts and inquiries*).
7. (*General relief*). See page 80.

Names of defendants.

The defendants to this Bill of Complaint are *C. D.* and *E.* his wife.

Note.—The husband must apparently be a party, as representing the legal title; and being in the position of a trustee will be entitled to his costs. These he will deduct from the separate pro-

perty of his wife coming to his hands (*Picard v. Hine*, L. R. 5 Ch. 274), or they will be paid by the plaintiff, and repaid to him out of the separate estate, with his costs of suit. For form of minutes compare minutes in *Bullpin v. Clarke*, p. 59; and as to appearance of a married woman defendant, see p. 44.

FORM II.

IN CHANCERY.

LORD CHANCELLOR.

VICE-CHANCELLOR.

Between *A. B.* Plaintiff,
and
C. D., E. F., and G. (his wife) Defendants.

BILL OF COMPLAINT.

To the Right Honourable, &c.

Humbly complaining, &c. [*as in Form 1*].

1. The defendant *G. F.* is the wife of the defendant *E. F.*, and is possessed of a considerable amount of real and personal property, vested in the defendant *C. D.*, as trustee for her, to her sole and separate use.

2. The defendant *G. F.*, who is living apart from her husband, the defendant *E. F.*, on the day of entered into and duly signed an agreement in writing with the plaintiff for the purchase from the plaintiff of the leasehold messuages and premises No. 7, Charles Street, and the business of jeweller carried on by the plaintiff on the said premises and the good-will thereof at the price of 600*l.*

3. The defendant *G. F.* refuses to complete the said purchase, and denies that the said agreement of the day of is binding on her. The plaintiff charges that the said agreement is in Equity a good and valid agreement, and enforceable against the separate property of the defendant *G. F.*

4. The plaintiff is willing and hereby offers on his part duly to perform the said agreement.

Bill against
a married
woman for
specific per-
formance of
agreement to
purchase lease
and goodwill,
the trustee of
her separate
estate being a
party to the
suit.

PRAYER.

The plaintiff prays as follows:—

1. That it may be declared that the said agreement of the day of is a good and valid agreement and binding in Equity on the separate property of the defendant *G. F.*
2. That the defendant *C. D.* may be ordered by sale or otherwise, out of the separate property of the defendant *G. F.*, to pay to the plaintiff the said sum of 600*l.* and interest.
3. That the plaintiff's costs of this suit may be paid out of the separate estate of the defendant *G. F.*
4. (*Necessary accounts and enquiries.*)
5. (*General relief.*) See page 80.

Names of defendants, &c. &c.

Note.—When the wife is living separate from her husband, the presumption is that she is dealing in respect of separate estate, and the plaintiff need not prove that the contract was entered into on the faith of that estate (*Johnson v. Gallagher, supra*, p. 8). See also as to form of decree and generally, *Picard v. Hine*, L. R. 5 Ch. 274. Where there is no trustee, the prayer will be for payment by the husband, as in Form I.

FORM III.

IN CHANCERY.

LORD CHANCELLOR.

VICE-CHANCELLOR.

Bill for
administration
of separate
estate.

Between *A. B.* Plaintiff,
and
C. D. and E. F. . . . Defendants.

BILL OF COMPLAINT.

To the Right Honourable, &c. [*as in Form I.*]

Humbly complaining, sheweth unto his Lordship *A. B.* of [*address and description*], on behalf of himself and all other the separate creditors of *G. D.*, late of, &c., deceased, the above-named Plaintiff, as follows:—

1. The said *G. D.* was, at the time of her death, indebted to the plaintiff in the sum of 10*l.* 12*s.*, for goods supplied by the plaintiff to the said *G. D.* at her request, for the purposes of the trade of upholsterer, carried on by her at, &c., separately from her husband, the defendant *C. D.* The said *G. D.* was also at the time of her death indebted to divers other persons in respect of her said trade.

2. The said *G. D.* being entitled, in addition to her said separate trade and the assets and effects thereof, to considerable real and personal estate to her separate use, by her will, bearing date the day of , devised and bequeathed the same to the defendants *C. D.* and *E. F.*, their heirs, executors, administrators, and assigns, according to the nature and quality of the same respectively, upon trust for sale and conversion as therein mentioned, and by her said will appointed the said defendants executors thereof.

3. The said *G. D.*, being so entitled as aforesaid, died on the day of , and her said will was on the day of duly proved by the said defendants, in the principal registry of Her Majesty's Court of Probate.

4. The defendants, though repeatedly requested so to do, have not paid the debt so due to the plaintiff as aforesaid, and the said debt is now due and owing to the plaintiff.

PRAYER.

The plaintiff prays as follows:—

1. That an account may be taken of what is due to the plaintiff and all other the creditors of the said *G. D.*
2. That the amount, which shall be so found due, may be paid out of the separate estate, as well real as personal of the said *G. D.* in due course of administration, by and under the direction of this Honourable Court.
3. That for the purpose aforesaid all necessary directions may be given, inquiries made, and accounts taken.
4. That the plaintiff may have such further or other relief as the nature of the case may require.

Names of defendants, &c. &c.

Note.—For Minutes of Decree, see Form VI.

FORM IV.

IN CHANCERY.

LORD CHANCELLOR.

VICE-CHANCELLOR.

Between *A. B.* *Plaintiff,*
 and
C. D. *Defendant.*

Bill, by married woman,
 to restrain an
 infringement
 of copyright.

BILL OF COMPLAINT.

To the Right Honourable, &c.

Humbly complaining, &c. [*as in Form I*].

1. The Plaintiff is a professor and composer of music, and as such carries on an employment separately from her husband, whereby she has acquired considerable separate property, within the meaning of the "Married Women's Property Act, 1870."

2. In the early part of the year 1872 the plaintiff composed an operetta, and set words to the same, and subsequently published the said operetta under the title of . The said operetta was on the day of , 1872, duly registered by the plaintiff under the provisions of the Copyright Act (5 & 6 Vict. c. 45, s. 20), and the plaintiff thereupon became and still is the sole owner of the copyright in the said operetta as such separate property as aforesaid.

3. The said operetta has obtained great popularity, and the copyright version thereof commands a wide sale, and large profits have been realised by the plaintiff by the sale thereof.

4. The plaintiff has recently discovered that the defendant is publishing and selling a pirated version of the said operetta differing only colourably from the plaintiff's said copyright edition.

5. The plaintiff's separate property in the said copyright will be irreparably injured, unless the defendant be restrained by the order and injunction of this Honourable Court from selling the said pirated version of the said operetta.

6. The plaintiff has already suffered considerable pecuniary loss and damage by the wrongful acts of the defendant.

PRAYER.

The plaintiff prays as follows:—

1. That the defendant, his servants and agents, may be restrained, by the order and injunction of this Honourable

Court, from publishing, selling, or offering for sale the said version of the said operetta so published by him as aforesaid or any other version of the said operetta other than that published by the plaintiff.

2. That damages may be paid to the plaintiff by the defendant for his wrongful acts in the premises.
3. That the defendant may pay the costs of this suit.
4. (*Accounts and inquiries*).
5. (*General relief*) as at p. 80.

Note.—This bill is filed under the 11th section, under which the wife has the same remedies for the protection of her separate property, as a *feme sole*. Her husband is therefore not made a party, and she sues without a next friend: see note (f), p. 43.

FORM V.

Decree for
payment of
debt secured
by note of
hand out of
separate estate.

Let the defendants *P.* and *L.* (trustees) receive the rents and profits of the several estates comprised in the indenture of settlement in the pleadings mentioned, dated, &c.; and let an account be taken of what is due to the plaintiff for principal and interest on the note of hand of the defendant in the bill mentioned, dated, &c.; and let the costs of the plaintiff and of the said defendants *P.* and *L.* of this suit (cause) up to this time be taxed, &c.; and let the said defendants *P.* and *L.* (within, &c.) pay to the plaintiff what shall be certified to be due to him in respect of such principal interest and costs out of the rents and profits hereinbefore directed to be received by them; and be at liberty thereout also to retain the amount of their said costs when taxed; and let the said defendants account annually before (the judge) for the rents and profits of the estates comprised in the said indenture of settlement which they shall so receive; and (within, &c.) pay over to the plaintiff the balances which shall from time to time be certified to be due from them in passing such accounts until such principal interest and costs as aforesaid, and also any subsequent interest or any part of such principal which shall from time to time remain unpaid, shall be fully paid and satisfied. Adjourn further consideration, &c. (*Bullpin v. Clarke*, 17 Ves. 365; *supra*, p. 59; Seton, 678.)

FORM VI.

Let the following accounts and inquiries be taken and made.

1. An account of what is due to the plaintiff and all other the creditors of *A.* deceased, the testatrix in the bill named.

2. An account of the testatrix's funeral expenses.

3. An account of the personal estate of the testatrix which passed by her will come to the hands of the defendants *B.* and *C.*, her executors or either of them, or to the hands of any other persons or person by the order or for the use of the said defendants or either of them.

4. An inquiry what parts, if any, of the testatrix's personal estate are outstanding or undisposed of.

And let the testatrix's personal estate be applied in payment of her debts and funeral expenses in a course of administration *pari passu*.

And in case the testatrix's personal estate shall be insufficient for the payment of her debts and funeral expenses, let the following further inquiries and account be made and taken.

5. An inquiry what real estates have passed under the will of the testatrix.

6. An account of the rents and profits of the testatrix's real estates received by the said defendants or either of them, &c.

(*Inquiries as to incumbrances, and directions for sale*, see Seton, p. 251.)

Adjourn, &c. (*Owens v. Dickenson*, Cr. & Ph. 48; Seton, p. 233.)

Decree for administration of separate real and personal estate.

FORM VII.

IN CHANCERY.

Between *A. B.* . . . Plaintiff,
and
C. D. . . . Defendant.

And in the matter of the "Married Women's Property Act, 1870."

To the Right Honourable, &c.

The humble petition of *E. F.*, the wife of *G. F.*, of [*address and description*], by *H. K.* her next friend.

Petition for the transfer of a fund of Consols into the name of a married woman under the Married Women's Property Act, 1870, s. 3.

1. [*State institution of suit, as for administration of the estate of X. an intestate, and subsequent proceedings, and date of petitioner's marriage.*]

2. Your petitioner, as one of the three next of kin of the said intestate, is entitled to one equal third share in his personal estate, which said share is now represented by the sum of 1000*l.* consolidated 3*l.* per Cent. Bank Annuities, and the sum of 35*l.* cash standing to the credit of the above-mentioned suit, the account of *E. F.*, the wife of *G. F.*

3. Your petitioner is desirous that the said sum of 1000*l.* consolidated 3*l.* per Cent. Bank Annuities may be transferred into her name as a married woman entitled thereto to her separate use, under the provisions of the "Married Women's Property Act, 1870."

Your petitioner therefore humbly prays

That the sum of 1000*l.* Consolidated 3*l.* per Cent. Bank Annuities standing to the credit of the above-mentioned suit, the account of *E. F.*, the wife of *G. F.*, may be transferred into the name of your petitioner *E. F.*, the wife of *G. F.*, as a married woman entitled thereto to her separate use; and that the 35*l.* cash standing to the like credit, and any interest to accrue on the said Bank Annuities previous to such transfer, may be paid to the said *E. F.* on her separate receipt.

That such further or other order, &c.; as at p. 86.

And your petitioner will ever pray, &c.

It is intended to serve this petition on the said *G. F.*

Note.—This application may also be made on Summons, Dan. Ch. Forms, 1914. See also *Re Bartholomew's Trust*, and note (i), p. 27. The petitioner appears by a next friend in order to avoid questions as to security for costs: see note (f), p. 43.

FORM VIII.

IN CHANCERY.

LORD CHANCELLOR.

VICE-CHANCELLOR.

In the matter of *A. B.*, a married woman,

and

In the matter of the "Married Women's Property Act, 1870."

Notice of motion under the Married Women's Property Act, 1870, s. 9, as to ownership of property.

Take notice that this Honourable Court will be moved before His Honour Vice-Chancellor on the day of by, &c on the part of the above-named *A. B.*, the wife of *C. B.*, of [*address and description*], that it may be declared. [*State nature of question, as*] that the said *A. B.* is entitled to the stock-in-trade, assets, and effects of and relating to the business of , carried on by her at aforesaid, for her separate use, within the meaning of the above-mentioned Act, and that for that purpose all necessary inquiries may be made and directions given.

Dated, &c.

To the above-named *C. B.*

Note.—This form is in the nature of an originating motion. If it is made in a suit it must be headed in the suit. See *Dan. Ch. Forms*, 224.

FORM IX.

IN CHANCERY.

LORD CHANCELLOR.

VICE-CHANCELLOR.

In the matter of a policy effected on the life of *A. B.*,

and

In the matter of the "Married Women's Property Act, 1870."

Petition for the appointment of a trustee of a policy to the separate use of a married woman.

To the Lord High Chancellor of Great Britain.

The humble petition of *C. B.*, the wife of the above-mentioned *A. B.*, of [*address and description*], by *X. Y.* of [*address and descrip-*

tion], her next friend, and of *D. B.*, an infant, by the said *X. Y.*, his next friend, sheweth as follows:—

1. On the day of the said *A. B.*, in contemplation of his marriage with your petitioner *C. B.*, effected a policy on his life, numbered — in the — Insurance Company, for securing the sum of 1000*l.* to the separate use of your petitioner *C. B.* during her life, and after her decease for the children of the said marriage, as appears upon the face of the said policy.

2. The said marriage was duly solemnised on the day of , and there has been issue of the said marriage one child and no more, namely, your petitioner *D. B.*

3. The said *A. B.* is in failing health, and it is expedient that a trustee of the said policy should be appointed under the provisions of the 10th section of the “Married Women’s Property Act, 1870.” Your petitioners are desirous of appointing *M. N.* the trustee of the said policy. The said *M. N.* is a fit and proper person to be appointed such trustee.

Your petitioners therefore humbly pray your Lordship as follows:—

1. That the said *M. N.* may be appointed trustee of the said policy, numbered —, on the life of the said *A. B.*
2. That such further or other order may be made in the premises as to your Lordship shall seem meet.

And your petitioners will ever pray, &c.

It is intended to serve this petition on the said *A. B.*

Note.—A trustee appointed under the 10th section has a power of giving a good discharge to the office (*vide* sect. 10). He will be enabled to invest the money, when received, in the forms of investment, and with the powers, given to trustees by statute. See Davidson’s *Precedents in Conveyancing*, 3rd Ed., vol. iii. p. 26. The woman petitions by a next friend, to avoid difficulties as to the effect of the 11th section, see note (f), p. 43.

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